



HOW TO RESOLVE SPECIAL EDUCATION DISPUTES

WHEN MUST A FAMILY BE GIVEN A PROCEDURAL SAFEGUARDS LETTER?

Once a year, the public charter school or school district must provide the family with a "Procedural Safeguards Notice" that sets out in detail all of the child's and family's procedural rights—including how to request a mediation session or a special education hearing to dispute a decision that the school or school district has made. The family must also be given a Procedural Safeguards Notice when the family first requests that a child be evaluated, when the school or school district has requested an initial evaluation, the first time that school year the parent requests a special education hearing, and when the parent requests a copy of the Procedural Safeguards Notice.

WHEN MUST A SCHOOL GIVE A FAMILY WRITTEN NOTICE OF WHAT IT IS PROPOSING (OR REFUSING) TO DO?

A parent must be notified in writing when a school or school district wants to evaluate or re-evaluate a child; believes that a child is (or is not) eligible for special education services; proposes to change a child's disability classification; or proposes a change in the child's program or a "change in placement." A suspension or expulsion of a child with a disability for more than 10 school days at a time or for more than 15 school days in the school year is a "change in placement." (See ELC's Fact Sheet entitled, "*School Discipline and Students with Disabilities*." All ELC's Fact Sheets can be obtained from our website at www.elc-pa.org or by calling

the Philadelphia number listed below.) The school or school district must also send the parent a written notice if it refuses the parent's request to do any of these things.

The written notice is usually called a "Notice of Recommended Educational Placement" or NOREP. The NOREP explains what the district is proposing or refusing to do, what other options the district considered, and why those options were rejected. The NOREP must also describe any evaluations, assessments, records, or reports on which the school district is relying.

WHAT SHOULD I DO WHEN I RECEIVE A NOREP FROM MY CHARTER SCHOOL OR SCHOOL DISTRICT?

The NOREP has several "boxes" in which you can indicate whether you approve or disapprove of the school district's proposal, and, if you disapprove of it, the reason for your disapproval and what you want to happen: a meeting with the school district, a Pre-Hearing Conference, mediation, or a Due Process Hearing (note that a Pre-Hearing Conference is not an option for parents of students in charter schools). If the parent agrees with the school or school district's proposal, she should check the "I approve" box. If the parent disagrees with the proposal, she should check the "I do not approve" box. If the parent wants to have a special education hearing to resolve a dispute, it is no longer enough for a parent to check "I do not approve" box and the box requesting a Due Process Hearing. To request a hearing, the parent must also send a hearing request or "Complaint" to the school or school district and to Office of Dispute Resolution operated by the Pennsylvania Department of Education. See more about requesting a special education hearing below.

If the child is to be evaluated or to receive special education services *for the first time*, the school district cannot evaluate the child, identify the child as in need of special education, or implement the proposed program and placement without the parent's written agreement at each stage of the process. If the parent refuses to agree to an evaluation (or won't respond to an evaluation request), the school district can request a hearing and ask a Hearing Officer to compel the evaluation; but, a parent's refusal to allow the child to begin receiving special education services cannot be overridden by a Hearing Officer at a special

education hearing. *A parent has less control if the child is already receiving special education services, and the school or school district is proposing to change the child's disability classification, program, or placement.*

If the child is already receiving special education services, the school or school district must still give the family a NOREP that describes the proposed change and supporting information. If the parent agrees with the change and checks the "I approve" box, the school or school district can implement the proposed change. If the parent disagrees with the proposal, but does not check the "I do not approve" box on the NOREP, after 10 calendar days the school district may assume that the parent has agreed and may implement the change. Even if the parent misses this deadline, she can still challenge the placement or other aspect of the child's program through the procedural safeguard system described in this section. But, in the meantime, the school or school district can implement its proposed change and the child will have to stay in the new program or placement until the hearing and appeals have been completed with a result favorable to the family. Telling the school or school district that you don't agree isn't enough - you are only protected if you check the "I do not approve" box on the NOREP and request a hearing.

WHAT SHOULD I DO FIRST IF MY CHILD'S PROGRAM IS NOT WORKING?

A parent may not agree with the evaluation, IEP, or placement offered to a child. Before using any of the "dispute resolution" options described below, the family should try to resolve the conflict with the school or school district. Even when a special education program has been well planned and implemented, there are times when things just do not work. For example, the child may not be making progress in academic areas, may continue to have serious behavior problems in school, or may not have progressed in a life skills program. Here are some steps a parent can take to help improve the situation:

Talk with the child's teacher or other school staff, either by phone or, if possible, in person. Find out if the teacher sees the same problems and if the teacher can think of any changes in the classroom that might help. Ask to see any assessments that have been done and copies of the child's work and test results. Are all services on the child's IEP being provided? For public school students, is

the class over the number of students permitted by state law? Are there certain subjects or times of day that seem particularly hard for the child in class? Are the teaching strategies working for the child? Does the child need a "functional behavioral assessment" to identify more effective ways of dealing with behaviors that interfere with the child's learning and interrupt the class? 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. Keep a copy of the letter. At the IEP Team Meeting, the family can raise many of the same issues that it discussed with the teacher and other staff. The family can also explore whether the goals in the IEP (and the short-term objectives for lower functioning children) need to be changed; whether the child is making the progress that was expected; whether additional or more frequent related services are needed; and any other areas of concern about the child's program and placement.

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

- If no one seems to have the answers, perhaps the child needs to be re-evaluated. An instructional evaluation may identify better strategies to help teach the child, or a behavior assessment might show what changes are needed to the behavior program. *Remember, all needed evaluations must be done without cost to the family.* (See ELC's Fact Sheet entitled, "Evaluating Your Child" for more information on evaluations.)
- If a new evaluation will be needed, ask to sign the "Permission to Evaluate" form at the meeting or shortly afterwards. Remember, the school district has 60 school days, and a charter school 60 calendar days, from when the parent signs the Permission to Evaluate form to complete a new evaluation and give the parent the evaluation report, and a school district has 60 school days from when it receives a parent's written request for a re-evaluation to complete the re-evaluation and give the parent the Re-evaluation Report.
- Try to reach agreement on any changes that can be made to the child's program and IEP on a short-term basis while re-evaluations are being

done or a hearing is being held. Do not rely on what the charter school or school district *says* it will provide to your child. The IEP is like a contract - the school or school district is only required to give your child the services and supports that are written in the IEP. So, if the school or school district promises you something, and you want to make sure the promise is legally enforceable, ask them to write it in the IEP. (See ELC's Fact Sheet entitled, "Developing Your Child's Special Education Program" for a discussion of what belongs in an IEP.)

- If you anticipate problems at the IEP meeting, consider IEP Facilitation. IEP Facilitation is a new service offered by the Pennsylvania Department of Education's Office of Dispute Resolution (ODR). IEP facilitators can sometimes help schools and families resolve difficult problems relating to a child's IEP. IEP Facilitators are not Hearing Officers and cannot make decisions if the parties continue to disagree. But sometimes a neutral party at the IEP meeting can improve communication, which can lead to a good outcome. For more information on IEP Facilitation, check the ODR website at <http://odr.pattan.net/mediation/IEPFacilitation.aspx>, or call ODR at 1-800-222-3353.

IF I HAVE TRIED TO REACH AGREEMENT WITH THE CHARTER SCHOOL OR SCHOOL DISTRICT BUT HAVE NOT BEEN SUCCESSFUL, WHAT ARE MY OPTIONS?

Your options include filing a Division of Compliance (DOC) complaint, "mediating" the dispute with the school or school district, requesting a Pre-Hearing Conference (except for children in charter schools), or requesting a special education or "Due Process" hearing. The mediation and hearing processes described below are designed to resolve disagreements about the child's eligibility for special education, the types or amounts of services that should be included in an IEP, and other questions that involve disputed "facts." The DOC complaint system, on the other hand, should be used when parents believe the charter school or school district is not meeting clear legal obligations it owes to the child or family. All of these options are discussed below.

WHEN SHOULD I FILE A DOC COMPLAINT?

If the parent believes that her child is not getting the services already listed on the IEP, the school or school district is not complying with timelines or procedures, or the school or school district is otherwise violating the child's *legal rights*, she should file a complaint with the State's Division of Compliance, Monitoring, and Planning (DOC). The family must file the complaint within a year of the legal violation. If the parent wants the school or district to provide extra services to make up for what the child missed, she should ask for "compensatory education services" in her DOC complaint. If the parent is seeking reimbursement for money she had to spend to purchase services that the school or school district should have provided to the child, that request should also be listed in the DOC complaint.

A parent should *not* file a DOC complaint if she believes that her child's special education program is inappropriate or inadequate in some way. For example, if a parent believes her child needs three hours of physical therapy, but the school is only offering two hours, the parent should ask for mediation or a special education hearing. The complaint process will not resolve disputes about the appropriateness of a child's IEP - mediation or a special education hearing must be used to resolve such disputes.

To file a DOC complaint, the family can send DOC a letter explaining their concerns and attach copies of any relevant documents, such as the child's IEP. You can also get DOC's complaint form from ELC's website at www.elc-pa.org. DOC has 60 calendar days to investigate the complaint and issue a written report deciding whether the law has been violated and what is needed to correct the problem (called "corrective action"). DOC is supposed to follow up to assure that all "corrective action" has been completed. The letter should be sent to:

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

Parents can also call DOC's Special Education ConsultLine at 1-800-879-2301 if they have questions concerning their child's special education program or special education law. (If calling from outside Pennsylvania, dial 717-541-4960 ext. 3332.) The ConsultLine also assists parents with the complaint process, and may refer the parent to outside agencies and support services.

WHEN SHOULD I USE MEDIATION?

Mediation can be very helpful for families. It offers a quick and informal method for resolving disputes. If the parent and the school or school district agree to mediate, a "mediator" is assigned by the Office of Dispute Resolution—this person does not work for the school district and has training on how to help people reach agreements when they are not seeing eye-to-eye. The mediator will schedule a mediation session within 7 to 10 days of receiving the request. One benefit of mediation is that all discussions that take place at the mediation session are confidential and cannot be used by the school, school district or the parent in a later special education hearing or a court proceeding regarding the same problem. So, you should not worry about saying "the wrong thing" at the session.

The mediator will meet with each side separately, and then both sides together, to help find a resolution. Neither the school/school district nor the parent can bring an attorney to the mediation session; this helps to keep the mediation process informal. If the school or school district and parent reach an agreement, it should be put in writing and will be legally enforceable. If the agreement requires a change in the child's IEP, the school or school district will convene a meeting to make necessary revisions. For more information on mediation, check out the ODR website at <http://odr.pattan.net/>. You can download the mediation request form from that site. If you do not have access to a computer or the internet, call 1-800-992-4334.

You can also request mediation on the NOREP if you have checked the "I do not approve box." You then have a choice of checking the box for mediation, checking the box for a hearing, or checking both boxes. If the parent only checks the box for mediation, the timeline for scheduling a special education hearing does not begin to run. If you check both boxes and file a hearing request (see below for how to file a hearing request) the timelines for the hearing will start running while

the mediation takes place. In addition, if the problem is not resolved at the mediation session, and you already requested a hearing, the family will not be required to attend a "resolution session" before a hearing can be scheduled. (See discussion below for further information on resolution sessions).

WHEN SHOULD I REQUEST A PRE-HEARING CONFERENCE WITH MY SCHOOL DISTRICT?

Families can ask the school district convene a Pre-Hearing Conference (PHC) to discuss a problem. To request a PHC, the parent can disapprove of the NOREP and check the box for a PHC, or the family can write to the principal and request a "PreHearing Conference." (Keep a copy of the NOREP or the letter.) If the school district agrees to meet with the family (it is optional), it must schedule the Pre-Hearing Conference within 10 calendar days of the date it receives your written request. If the school does not agree to meet with you, you may have to request a hearing or mediation. If an agreement is reached at the PHC that includes changing a child's IEP services or placement, the new services or new placement must begin within 10 school days of the meeting. The parent has 5 calendar days to change her mind and cancel any agreement reached at the PHC. Pre-Hearing Conferences do not apply to public charter schools.

Although there may be cases where a PHC is useful, because of changes in federal law there is now less reason for the parent to choose this option. If the parent attends a PHC and later requests a special education hearing the parent will still be required to attend another meeting with the school district - called a preliminary meeting or resolution session - before a hearing will be scheduled. (The only way around this new requirement is if the school district agrees with the parent, in writing, to skip the resolution session).

HOW DO SPECIAL EDUCATION HEARINGS WORK?

How do I request a hearing?

A parent can request a special education hearing to resolve her dispute with the charter school or school district. The same rules that apply to the parent if

she is requesting the hearing apply to the school or school district if it is the party requesting a hearing. Even if you have checked the box on a NOREP offered by the school district requesting a "Due Process Hearing," you have not made a valid request for a hearing until you send a "complaint" or hearing request to the school district, with a copy to ODR 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.k12.pa.us.

What information must a special education hearing request contain?

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

- The child's name, home address (or available contact information if the child is homeless) and the name of the school;
- An explanation of the problems (including the facts relating to the problems); and,
- When possible, your suggestions as to how the problem might be solved.

If the school or school district thinks the parent's hearing request does not have the required information, it has 15 calendar days to argue to a Hearing Officer that the request is "insufficient," that is, it does not have the required information. If this occurs, the Hearing Officer has 5 calendar days to decide whether the request is sufficient, and the Hearing Officer must immediately notify the parties in writing. If the Hearing Officer rules that a request is not sufficient, no hearing will be scheduled based on the request.

Before you write your hearing request, 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. If you forget to mention a problem that you want resolved at the hearing, you will have to get permission from the other side or the Hearing Officer to "amend" your request (see below), and the hearing timelines will start all over again.

Can I ask for a hearing at any time?

A parent must request a hearing within 2 years of the date that the parent either knew or should have known about the problems listed in the Complaint. The 2-year limit does not apply if the parent was prevented from requesting a hearing because the school or school district specifically misrepresented that the problem was solved, or because the school or school district did not give the parent information about the problem that it was required to provide under the law. If the problems have been on-going for more than 2 years, you may still request a hearing but the award you will be given (if you win) may be limited.

Can I amend a hearing request?

A parent can "amend" a hearing request only if the school or school district agrees in writing and is given a chance to resolve the complaint through a resolution meeting (see below), or if the Hearing Officer permits the amendment, which must be more than 5 calendar days before the special education hearing occurs. The timelines for convening and concluding a special education hearing begin again when the amended complaint is sent to the school or school district and to ODR.

It is not yet clear whether a family whose Complaint is found to be "insufficient" will be required to amend their Complaint or whether they can start over by filing a new hearing request, and if so, whether the time limit (2 years) will apply to the first or the second version of the Complaint. That will probably not be clear until after the federal regulations interpreting the new federal special education law are finalized (and maybe not even then). If you are facing that situation, you can contact the Education Law Center for help.

Does the school or school district have to reply to my hearing request?

If the school or school district has not given the parent a NOREP explaining the reasons and support for the actions that the parent is complaining about, it must send the parent a NOREP within 10 calendar days of receiving the hearing request. If the school or school district provided a NOREP to the parent before the hearing request was filed, it must give the parent a written response to the

issues in the hearing request within 10 calendar days of receiving the request.

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

Within 15 calendar days of receiving the hearing request, the school or school district must schedule a "preliminary meeting" or "resolution session." A resolution session is a meeting of the parent and IEP Team members with specific knowledge of the facts in the hearing request. The meeting must also include someone from the school or school district with decision-making authority. Any agreement reached at this meeting must be put in writing and is legally enforceable; the agreement can be cancelled by either side within 3 business days. A resolution session is not required if a mediation session has been held concerning the dispute. The parent and the school or school district can also make a written agreement to skip the resolution session, but such an agreement will not speed up the scheduling of the hearing.

The resolution session and mediation options are designed to help the parties avoid the need for a hearing. But in most cases, especially if the parent has not unreasonably delayed the convening of a resolution session and 30 calendar days have gone by after the parent submitted her hearing request, if the parent is not satisfied with the school's or school district's response, the process and timelines for scheduling the hearing begins.

What rules apply at the hearing?

The family has the right to bring an attorney to the hearing. The family may also bring and seek the advice of non-lawyers with special knowledge or training about the problems of children with disabilities at the hearing (for example, an ELC "Buddy"). The family can have access to the child's school records before the hearing. The family (or the school) may ask the Hearing Officer to order a person to attend the hearing as a witness (for example, if the family wants to ask questions of a specific school employee at the hearing, that person can be required to attend and testify).

The family and school officials must exchange a list of all documents and

witnesses that they intend to use at the hearing, as well as copies of all evaluation reports that may be used at the hearing, at least 5 business days before the hearing is scheduled to begin. If you don't provide this information when required, the Hearing Officer can prevent you from using the documents or witnesses at the hearing. The Hearing Officer may not be an employee of the school or school district.

What happens 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 school personnel under oath. The family will want to show why the current or proposed evaluation, program, or placement of the child is not appropriate and what services would be appropriate.

For example, the family may want to show the Hearing Officer copies of the child's IEP or past report cards and progress reports to show that the child has not made much progress. The family may also want to use an outside "expert," such as a certified school psychologist or other evaluator, to discuss what's wrong with the current situation and what improvements are needed. The school district will also have an opportunity to introduce documents and the testimony of school personnel. Each side gets to "cross-examine," that is, to ask questions of the other side's witnesses.

If the parties settle the dispute before the hearing, they can ask the Hearing Officer to put the resolution "on the record." However, such agreements will not be enforced by the Hearing Officer or by the Division of Compliance since DOC will only enforce a Hearing Officer's decisions reached after the hearing has been concluded. The only way to enforce a settlement agreement is to go to court.

What happens next?

Once the timeline for scheduling the hearing begins, the Hearing Officer must make a written decision based on the information gathered at the hearing within 45 calendar days. The Hearing Officer can choose to extend this time at the request of either party (or refuse to extend this time).

If we lose at a hearing, can the Hearing Officer's decision be appealed?

The hearing decision can be appealed by either side to a Special Education Appeals Panel. A list of the issues on appeal (called "exceptions") and any brief that the parent chooses to file must be received by ODR within 15 calendar days of the date the Hearing Officer's decision is received by the parent's lawyer or the parent if she is not represented by an attorney. *The critical date is when the exceptions are received by ODR - not when they are sent.* The Appeals Panel decision must be completed within 30 calendar days. (These timelines also apply when a school or school district chooses to appeal a decision of a Hearing Officer.)

Who pays for the family's attorney?

Remember, you do not have to have an attorney to use the hearing process; you can go to the hearing by yourself. While it may seem scary to go to a hearing without an attorney, ask yourself what you have to lose if you go to a hearing on your own. You may not win everything you want, but you might win all or some of what you want. Even if you lose the hearing, you will know that you've given it your best shot.

If the family chooses to use an attorney at the hearing, and it ultimately wins the case through a decision of the Hearing Officer (not by a settlement before the hearing), the family may be eligible to be reimbursed by the district

for the attorney's fees and experts' costs. The family cannot be reimbursed for the time the attorney spends at an IEP conference, unless the conference is held as a result of the hearing.

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