

## RESOLVING SPECIAL EDUCATION DISAGREEMENTS

August 2021

Parents and schools may disagree about any matter related to a child's education, including whether or not a child is eligible for special education services, the Individualized Education Program (IEP) offered by the school, the type and length of services, and the child's school and classroom placement. This fact sheet provides information on how parents can address and resolve disagreements. **Note: In many cases, parents must notify a school that they disagree with a decision AND must take action to challenge a proposed IEP or placement within 10 days of written notice of the decision.**

### Special Considerations

**Modifications for health and safety:** Schools are required to have plans in place for ensuring health and safety for in-person learning. Some students with disabilities may not be able to adhere to all of these requirements due to the nature of their disabilities. For example, some students may not be able to tolerate all-day mask wearing due to sensory concerns. In these cases, parents should request modifications to the health and safety requirements, and IEP teams should work to design alternative plans to ensure that students remain safe during in-person learning. Students with disabilities should not be required to remain on virtual learning solely due to the student's inability to follow a health and safety requirement stemming from a disability-related need. Parents have the right to disagree with the failure to modify the health and safety requirements or the alternative plans developed. The rights and advocacy tips discussed in this fact sheet apply.

**In-person learning:** As more schools return to in-person learning, there may be some students with disabilities, particularly those who are medically fragile or have other health considerations, for whom schools continue to be unsafe due to the COVID-19 pandemic. In these cases, a parent should request an IEP meeting to determine how their child's educational needs can be met virtually or whether there are accommodations that can be designed to allow in-school participation. Prior to the IEP meeting, parents should request support from medical professionals to document the nature of the health risks and make recommendations for safe school participation. Parents have the right to disagree with their child's proposed placement, including in-person learning, made by their IEP teams. The rights and advocacy tips discussed in this fact sheet apply.

**Virtual learning:** Remote learning can and should be individualized. Schools should contact you to create a plan for your child's learning during this period. This plan should be based on your child's needs and should be modified as new needs come up related to COVID-19 school changes, if your child has new learning or support needs, or if the current plan is not supporting your child to make meaningful progress.

**Written notice and how to disagree:** After any meeting, you should get a written Notice of Recommended Educational Placement (NOREP) or Prior Written Notice (PWN) that describes your child's plan. If you disagree with the plan, you should tell the school about your concerns. You can request a new meeting, mediation, or a due process hearing. But you have to take some action within 10 days, or the new proposal will take effect. You can also send a letter of complaint to the state as described below. See our forms to [request mediation](#) or [due process](#).

**COVID Compensatory Services:** Because nearly all students with disabilities were impacted by barriers to education created, or made worse, by the pandemic, all school districts in Pennsylvania are required

to determine the services that are necessary to make up for the education disruption during this time. These services are called COVID Compensatory Services (CCS).

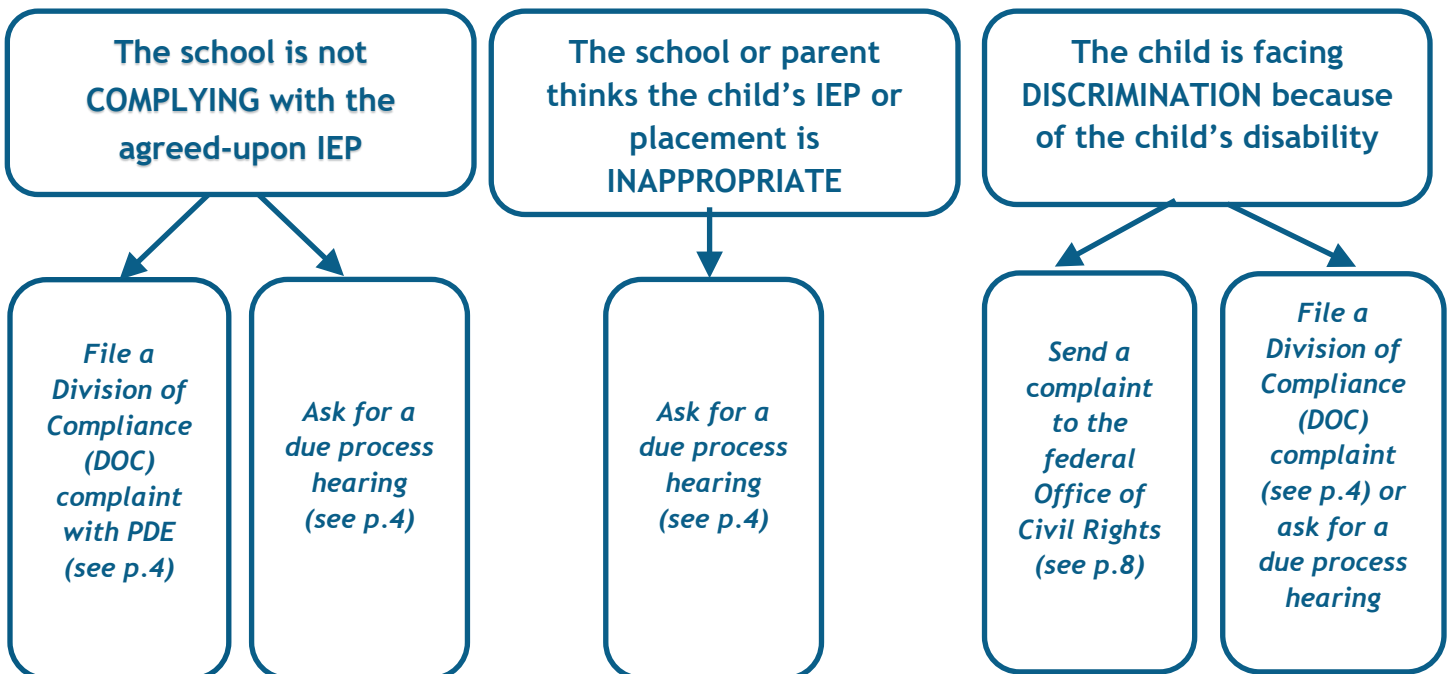
- ➔ Your child’s IEP team should meet with you to develop a plan to collect data on your child’s skills to compare with data from before the pandemic.
- ➔ If your child did not make meaningful progress or lost skills, the IEP team should develop a plan with you to provide CCS. PDE has a suggested plan for deciding how much CCS your child is owed.
- ➔ If you disagree with the plan for CCS, you can take any of the advocacy steps that are described in this fact sheet about what to do when you disagree with decisions of the IEP team.

**Compensatory education:** Your child may also have a right to receive make-up services, called compensatory education, for the time your child was deprived of a free appropriate public education. This includes any services required by your child’s IEP that were not provided due to pandemic-related barriers. If you believe that your child did not receive required services, you can request compensatory education. Parents have the right to disagree with the decision regarding compensatory education. The rights and advocacy tips discussed in this fact sheet apply.

### RESOLVING DIFFERENT TYPES OF DISAGREEMENTS

Parents can challenge a determination that their child is not eligible for special education services or was not evaluated in a timely manner. Parents can do this by filing a Division of Compliance complaint with the Pennsylvania Department of Education or by requesting a due process hearing.

In addition, once a child is receiving services, there are three main types of disagreements you can solve using special education laws.



While these options all involve submitting written complaints (in a letter), there are many ways to resolve problems without filing a complaint. These include asking for an IEP team meeting to discuss the conflict, requesting mediation (*see p. 2*), requesting a facilitated IEP meeting (go [here](#) for more information about this process), or using the services of a trained education advocate who can provide individualized assistance, support, and resources to families who have children with disabilities.

### WHAT IS A NOREP AND WHY IS IT IMPORTANT?

Disagreements can happen at any time, but they often involve a NOREP – the Notice of Recommended Educational Placement. This document is issued by the school and provides written notice to a parent that the school is proposing to change or keep a child’s services or placement, or that the school has determined that the child is not eligible for special education services.<sup>1</sup>

If a parent disagrees with what is offered in the NOREP, they must **notify the school that they do not agree within 10 days of receiving the NOREP; otherwise, the proposed changes will go into effect.** If you disagree with the changes proposed in the NOREP, it is very important that you ask for a due process hearing or mediation before these 10 days are up in order to stop the changes from taking place based on your presumed agreement and waiver of your rights. A parent can let the school know that they disagree with changes proposed in the NOREP by filling out the “***do not approve***” section of the NOREP **and** requesting mediation, due process, or both. Requesting mediation is the easiest way to resolve a dispute and only requires submission of a form. If you do not take action to challenge the school’s decision through one of these processes, the changes can go into effect. You can also lose your child’s “right to remain” (pendency) in the same program.

### WHAT IS MEDIATION?

Parents may ask for mediation to resolve **any** disagreement regarding a child’s educational program, including the IEP, evaluation, or placement.<sup>2</sup> It can be a quick, free,<sup>3</sup> and effective way to resolve disputes. You can request mediation by completing this simple [form](#) and emailing it to [ODR@odr-pa.org](mailto:ODR@odr-pa.org) or calling the Office of Dispute Resolution at 1-800-879-2301.<sup>4</sup>

Here are some important points about mediation:

- If both the parent and the school district agree to mediation, ODR will assign a trained and impartial person to meet with both parties to try to find a solution to the disagreement.<sup>5</sup>
- Parents may bring an advocate or attorney; the school district can only bring an attorney if the parent has an attorney.<sup>6</sup>
- Discussions that occur during mediation are confidential.<sup>7</sup>
- The school must follow mediation agreements, and they are legally enforceable.<sup>8</sup>
- Mediation can be used before requesting a due process hearing, but nothing that is said during mediation can be used in the due process hearing.<sup>9</sup>
- If you don’t agree with the result from mediation, you can still file a due process request.

You can also request IEP facilitation, a voluntary process that can be used when all parties to an IEP meeting agree that the presence of a neutral third party would help facilitate communication and the drafting of an effective IEP. You can use this [form](#) to request IEP facilitation.

### WHAT IS A DIVISION OF COMPLIANCE (DOC) COMPLAINT?

If a school is failing to provide a service in a student's IEP or refusing to evaluate the student, or a student is being discriminated against based on a disability, parents may file complaints with the Division of Compliance (DOC), which is part of the Bureau of Special Education (BSE) of the Pennsylvania Department of Education (PDE).<sup>10</sup> In general, a DOC complaint is filed when the facts at issue are not in dispute. A complaint is in the form of a letter and must:

- Include a description of problems that happened within the past calendar year<sup>11</sup>;
- Include your child's name, school, and home address (or contact information if the child is experiencing homelessness);
- State that the school has violated a special education law by acting or failing to act;
- Include an explanation of the problem(s);
- Propose a solution to the problem(s) to remedy what occurred;
- Include your contact information and a signature<sup>12</sup>.

To file a complaint, you can complete and send in this [complaint form](#) by email or regular mail. You can call BSE at 717-783-6913 if you have questions or want to send this by email.

Complaints should be sent to the school<sup>13</sup> AND to:

Pennsylvania Department of Education  
BSE - Division of Monitoring and Improvement - East  
333 Market Street, 7<sup>th</sup> Floor  
Harrisburg, PA 17126-0333

BSE must investigate and issue a written report within **60 days** of receiving the complaint.<sup>14</sup> This report must address each problem identified in the complaint and provide a reason for BSE's decision. If BSE finds that the school violated the law, it can order the school to take "corrective action" to remedy the problem. If you disagree with the result, you can file for reconsideration within 10 days of the date of BSE's "Corrective Investigation Report" (CIR).

### WHAT IS A DUE PROCESS HEARING?

A parent can request a due process hearing if the services the school is providing or offering to provide are not appropriate, or if a parent disagrees with a proposed placement or a school's conclusion that a child is not eligible for services. For instance, a parent may choose to file a due process complaint if the school is refusing to perform an appropriate evaluation, is not educating the child in the least restrictive environment, or is refusing to provide appropriate modifications and related services.<sup>15</sup> A parent must request a due process hearing within **two years** of the date that the parent knew or should have known that the problem happened.<sup>16</sup>

If the parent checks the “Due Process Hearing” box on a NOREP, this does not automatically start the hearing process. The parent must also send a letter or a “complaint” to request a due process hearing.<sup>17</sup>

***How do I request a due process hearing?***

- Write a letter that includes<sup>18</sup>
  - Your child’s name, school, and home address (or contact information if you are homeless);
  - An explanation of the problem;
  - Your suggestions to solve the problem.
- Send the letter to the school **and** to the Office of Dispute Resolution at [ODR@odr-pa.org](mailto:ODR@odr-pa.org) or the Pennsylvania Office of Dispute Resolution, 6340 Flank Drive, Harrisburg, PA 17112.<sup>19</sup>
- OR you can complete this [form](#) and send it to the addresses above.

***What education will my child receive during the hearing process?***

After a parent requests a due process hearing or mediation, the school cannot change the child’s current program, including the educational services the child receives, until the hearing or mediation is complete, unless the parties agree to a change. Instead, the school must continue to implement the last IEP in the placement that was agreed to by both the school and the parent.<sup>20</sup> This requirement is called stay put or pendency.

***What happens after I request a hearing?***

- Within 15 days of receiving the complaint, the school must hold a resolution session.
- This session is required unless both the parent and the school agree to skip it.
- Parents can choose to bring a lawyer to the resolution meeting.
- If the parent and the school reach an agreement, it must be put in writing. After the meeting, both the parent and the school have three days to change their mind and cancel the agreement.
- If you come to an agreement at the resolution session, make sure whatever you agreed on is written into your child’s IEP so that you can hold the school to the agreement.

***What happens at the hearing?***

- If the parent and the school do not come to an agreement through the resolution session, the case will be decided by a Hearing Officer.
- Both the parent and the school must identify the witnesses they will call and documents they will present at the hearing at least five days before the scheduled hearing date.
- The Hearing Officer is knowledgeable about special education law and is not connected to the school. The Hearing Officer runs the hearing.<sup>21</sup>
- Parents can bring a lawyer, call witnesses, and show documents at the hearing. Parents can ask questions of the school’s witnesses.<sup>22</sup>
- The school can call witnesses, show documents, and ask questions of the parent’s witnesses.
- The parent must show that the child is not receiving an appropriate education through the existing or proposed IEP, placement, or evaluation.

### *What happens after the hearing?*

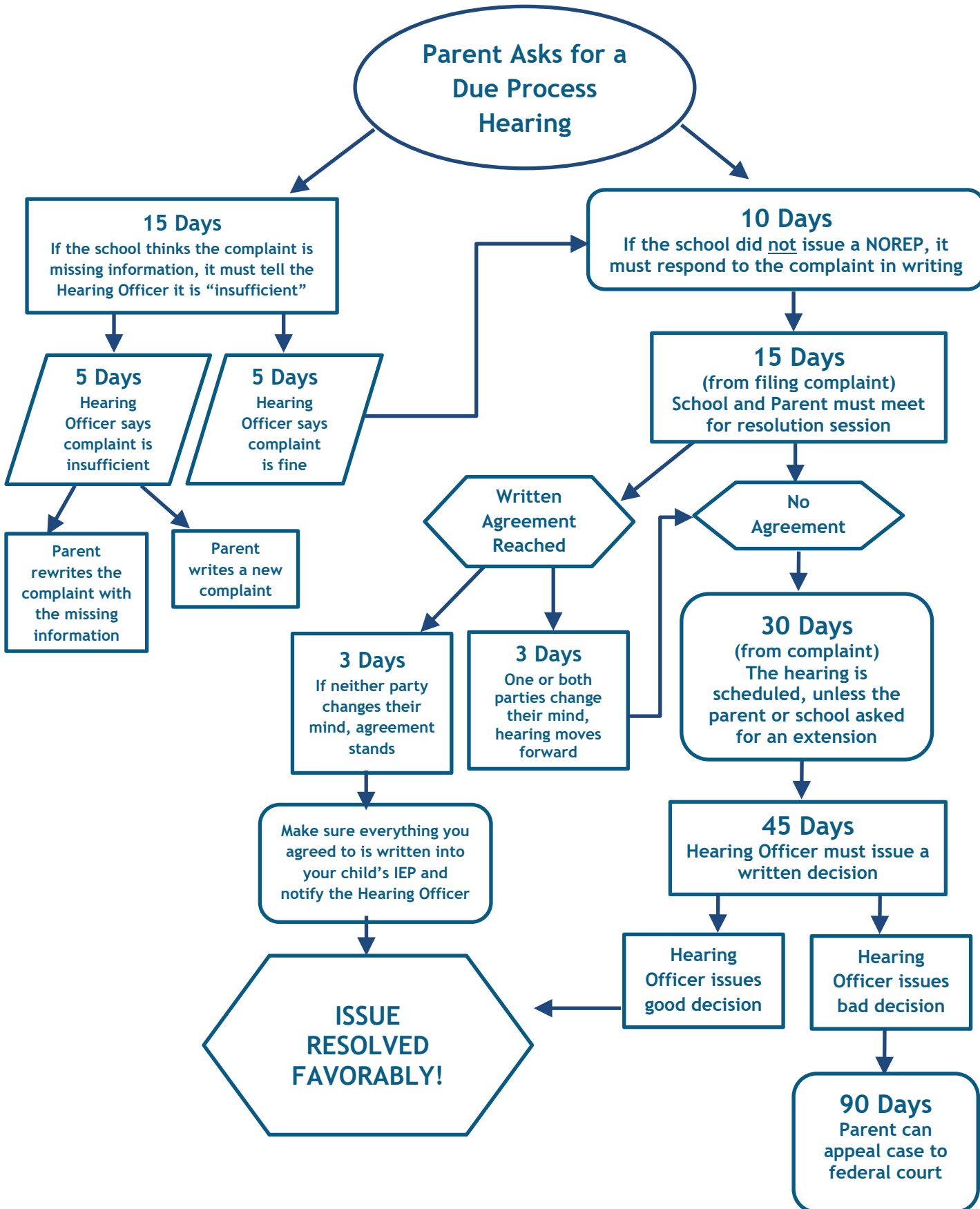
- The Hearing Officer must make a written decision within **45 days** after the resolution session ends.<sup>23</sup>
- If you do not agree with the decision, you can ask that it be reviewed by another court. You have 90 days to file an appeal in federal court (or 30 days to file an appeal in state court). The school can also appeal the decision if they do not agree with it. Most appeals from due process hearings are filed in federal court.
- The school must follow the decision or request for it to be reviewed in court.<sup>24</sup>
- You can read Hearing Officer decisions [here](#).

### *Do I need a lawyer for a due process hearing?*

A parent has a right to bring a lawyer to a due process hearing, but you do not need a lawyer to go to a hearing.<sup>25</sup> You can represent yourself, which is called *pro se*. The school will almost always have a lawyer.

A parent can also choose to bring someone who has special knowledge or training about the problems the child is facing.<sup>26</sup> A parent also has a right to access the child's school records any time before the hearing and to present documents at the hearing.<sup>27</sup>

Once you request a due process hearing, the following timeline<sup>28</sup> begins:





## WHAT IS A COMPLAINT TO THE OFFICE FOR CIVIL RIGHTS?

If a parent believes her child is being discriminated against because of disability, race, national origin, religion, or sex discrimination, a parent can send a complaint to the U.S. Department of Education's Office for Civil Rights (OCR).<sup>29</sup> OCR can also address cases where a child is being bullied or harassed because of their disability, race, national origin, religion, or sex discrimination.<sup>30</sup>

To file a complaint with OCR, you can complete this [form](#) or write a letter that includes:

- Facts about discrimination or harassment that happened within the last **180 days**;
- Your name, address and, if possible, phone number; and
- The school's name and location, as well as the school district.<sup>31</sup>

You can email the letter to [ocr@ed.gov](mailto:ocr@ed.gov) or mail it to the Office for Civil Rights, U.S. Department of Education, The Wanamaker Building, 100 Penn Square East, Suite 515, Philadelphia, PA 19107. OCR will open an investigation and issue a written decision, unless the complaint can be resolved through the Facilitated Resolution process (formerly known as Early Complaint Resolution).<sup>32</sup> You can learn more about the process [here](#).

Families can also file claims of disability-based discrimination with the Bureau of Special Education of the Pennsylvania Department of Education or through a due process hearing.<sup>33</sup>

The Education Law Center-PA (ELC) is a nonprofit, legal advocacy organization with offices in Philadelphia and Pittsburgh, dedicated to ensuring that all children in Pennsylvania have access to a quality public education. Through legal representation, impact litigation, community engagement, and policy advocacy, ELC advances the rights of underserved children, including children living in poverty, children of color, children in the foster care and juvenile justice systems, children with disabilities, English learners, LGBTQ students, and children experiencing homelessness.

ELC's publications provide a general statement of the law. However, each situation is different. If questions remain about how the law applies to a particular situation, contact ELC's Helpline for information and advice – visit [www.elc-pa.org/contact](http://www.elc-pa.org/contact) or call 215-238-6970 (Eastern and Central PA) or 412-258-2120 (Western PA) – or contact another attorney of your choice.

<sup>1</sup> 20 U.S.C. 1415(b)(3); 34 C.F.R. 300.504(c).

<sup>2</sup> 34 C.F.R. 300.506(a).

<sup>3</sup> 34 C.F.R. 300.506(b)(4).

<sup>4</sup> <http://odr-pa.org/mediation/overview>.

<sup>5</sup> 34 C.F.R. 300.506(b)(1).

<sup>6</sup> *Your Guide to Special Education Mediation*, at 5, Office for Dispute Resolution, 2021, available at <https://odr-pa.org/wp-content/uploads/medguide.pdf>.

<sup>7</sup> 34 C.F.R. 300.506(b)(8).

<sup>8</sup> 34 C.F.R. 300.506(b)(7).

<sup>9</sup> 34 C.F.R. 300.506(a), (b)(8).

<sup>10</sup> 34 C.F.R. 300.151 *et seq.*; *Special Education State Complaint Resolution Procedures*, Penn. Dept. of Educ., 2016.

<sup>11</sup> 34 C.F.R. 300.153(c).



- <sup>12</sup> 34 C.F.R. 300.153(b).
- <sup>13</sup> 34 C.F.R. 300.153(d); *Special Education State Complaint Resolution Procedures*, at 2, Penn. Dept. of Educ., 2016.
- <sup>14</sup> 34 C.F.R. 300.152(a).
- <sup>15</sup> 20 U.S.C. 1415(b)(6)(A).
- <sup>16</sup> 20 U.S.C. 1415(b)(6)(B).
- <sup>17</sup> 22 Pa. Code 14.162(b).
- <sup>18</sup> 20 U.S.C. 1415(b)(7)(A)(ii).
- <sup>19</sup> <http://odr-pa.org/due-process/overview>.
- <sup>20</sup> 34 C.F.R. 300.518; 22 Pa. Code 14.162(s).
- <sup>21</sup> 34 C.F.R. 300.511(C)(1)(i)-(ii).
- <sup>22</sup> 34 C.F.R. 300.512(a)(2).
- <sup>23</sup> 22 Pa. Code 14.162(q)(2).
- <sup>24</sup> 22 Pa. Code 14.162(o).
- <sup>25</sup> 34 C.F.R. 300.512(a)(1).
- <sup>26</sup> 34 C.F.R. 300.512(a)(1).
- <sup>27</sup> 20 U.S.C. 1415(b)(1); 34 C.F.R. 300.501(a).
- <sup>28</sup> 22 Pa. Code 14.162(q); 34 C.F.R. 300.510(a)(1); 34 C.F.R. 300.512(b)(1); 34 C.F.R. 300.508(d)(1)-(2); 34 C.F.R. 300.508(e)(1); *Dispute Resolution Manual*, at 27, Pa. Office of Dispute Resolution (2017).
- <sup>29</sup> *How to File a Discrimination Complaint with the Office for Civil Rights*, at 1, U.S. Dept. of Educ. Office for Civil Rights, available at <https://www2.ed.gov/about/offices/list/ocr/docs/howto.pdf>.
- <sup>30</sup> *Dear Colleague Letter*, U.S. Dept. of Educ. Office for Civil Rights, Oct. 21, 2014, available at <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-bullying-201410.pdf>.
- <sup>31</sup> *Questions and Answers on OCR's Complaint Process*, available at <https://www2.ed.gov/about/offices/list/ocr/qa-complaints.html>.
- <sup>32</sup> *How OCR Handles Complaints*, U.S. Dept. of Educ. Office for Civil Rights, 2018, available at <https://www2.ed.gov/about/offices/list/ocr/docs/complaints-how.pdf>.
- <sup>33</sup> *Special Education State Complaint Resolution Procedures*, Penn. Dept. of Educ., 2016.