

RESOLVING SPECIAL EDUCATION DISAGREEMENTS

August 2024

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.

SYSTEMIC RACIAL DISCRIMINATION AND BIAS IN SPECIAL EDUCATION

Due to both institutional racism and individual biases of school personnel, Black and Brown students have been harmed by the disparate implementation of special education services and racial bias in the identification of Black and Brown students for eligibility.¹ While special education laws and policies have evolved to incorporate some measures to address these well-researched failures,² including over-identification, under-identification, and hyper-segregation of Black and Brown students with disabilities due to systemic racism and ableism, such bias continues to have lasting impacts on Black and Brown students and their interaction with the special education system.

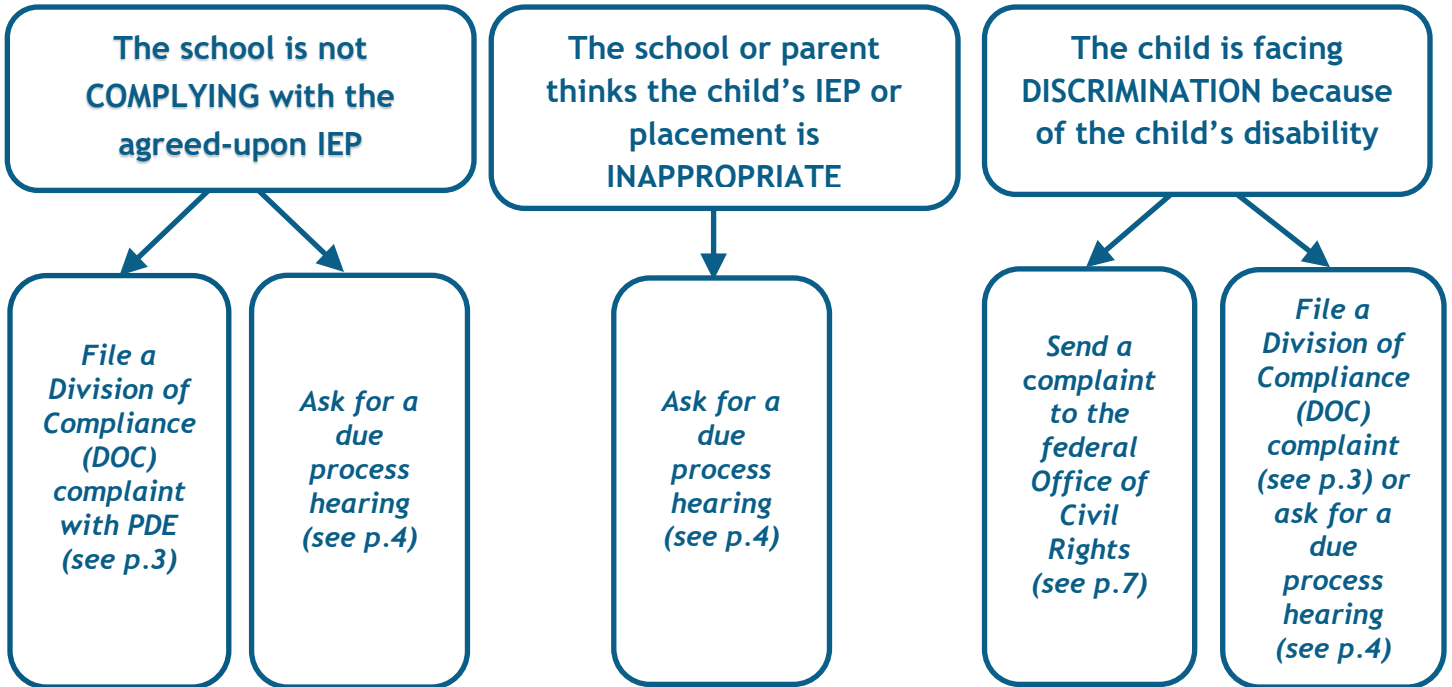
The combination of institutional barriers, such as housing segregation, inadequate school funding, and poverty, along with individual racial biases from teachers, administrators, and other school staff contribute to the negative impact of special education on Black and Brown students.³ In addition, Black and Brown students are also more likely to be denied the opportunity to access evidence-based educational interventions or rigorous academic courses, despite their otherwise equal eligibility for these programs.⁴

Even with the greater likelihood that their children are subjected to the failures of the special education system, Black and Brown parents and caregivers, through no fault of their own, are less likely to have access to channels to challenge special education decision-making due to institutional racism and individual biases.⁵ The consequences of racial disparities in special education can be significantly negative and long-term for Black and Brown students.⁶

RESOLVING DIFFERENT TYPES OF DISAGREEMENTS

Parents can challenge a determination that their child is not eligible for special education services, was not evaluated appropriately or in a timely manner, and was not provided the appropriate special education program or services. Due to several systemic causes including the disparate impact of inadequate school funding,⁷ Black and Brown students are more likely to be negatively impacted by special education referrals, evaluations, and identification failures than their white peers.⁸ For more information regarding systemic evaluation barriers and the legal requirements, please review [Special Education Evaluations](#).

Parents can challenge these issues 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. 3*), 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.⁹

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.¹⁰ It can be a quick, free,¹¹ and effective way to resolve disputes. You can request mediation by completing this simple [form](#) or calling the Office of Dispute Resolution at 1-800-222-3353.¹²

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.¹³
- Parents may bring an advocate or attorney; the school district can only bring an attorney if the parent has an attorney.¹⁴
- Discussions that occur during mediation are confidential.¹⁵
- The school must follow mediation agreements, and they are legally enforceable.¹⁶
- 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.¹⁷
- If you do not 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).¹⁸ 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;¹⁹
- 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.²⁰

To file a complaint, you can complete and send in this [complaint form](#) by email (rapdespecial@pa.gov) 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 school²¹ AND to:

Pennsylvania Department of Education
 Bureau of Special Education
 ATTN: Division of Compliance Monitoring and Planning - East
 607 South Drive, 5th Floor - East Wing
 Harrisburg, PA 17120

BSE must investigate and issue a written report within **60 days** of receiving the complaint.²² 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 "Complaint 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.²³ 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.²⁴

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.²⁵

How do I request a due process hearing?

- Write a letter that includes²⁶
 - your child's name, school, and home address (or contact information if you are experiencing homelessness);
 - 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 or the Pennsylvania Office of Dispute Resolution, 6340 Flank Drive, Harrisburg, PA 17112.²⁷
- OR you can complete [this form](#).

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.²⁸ 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.²⁹
- Parents can bring a lawyer, call witnesses, and show documents at the hearing. Parents can ask questions of the school's witnesses.³⁰
- 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?

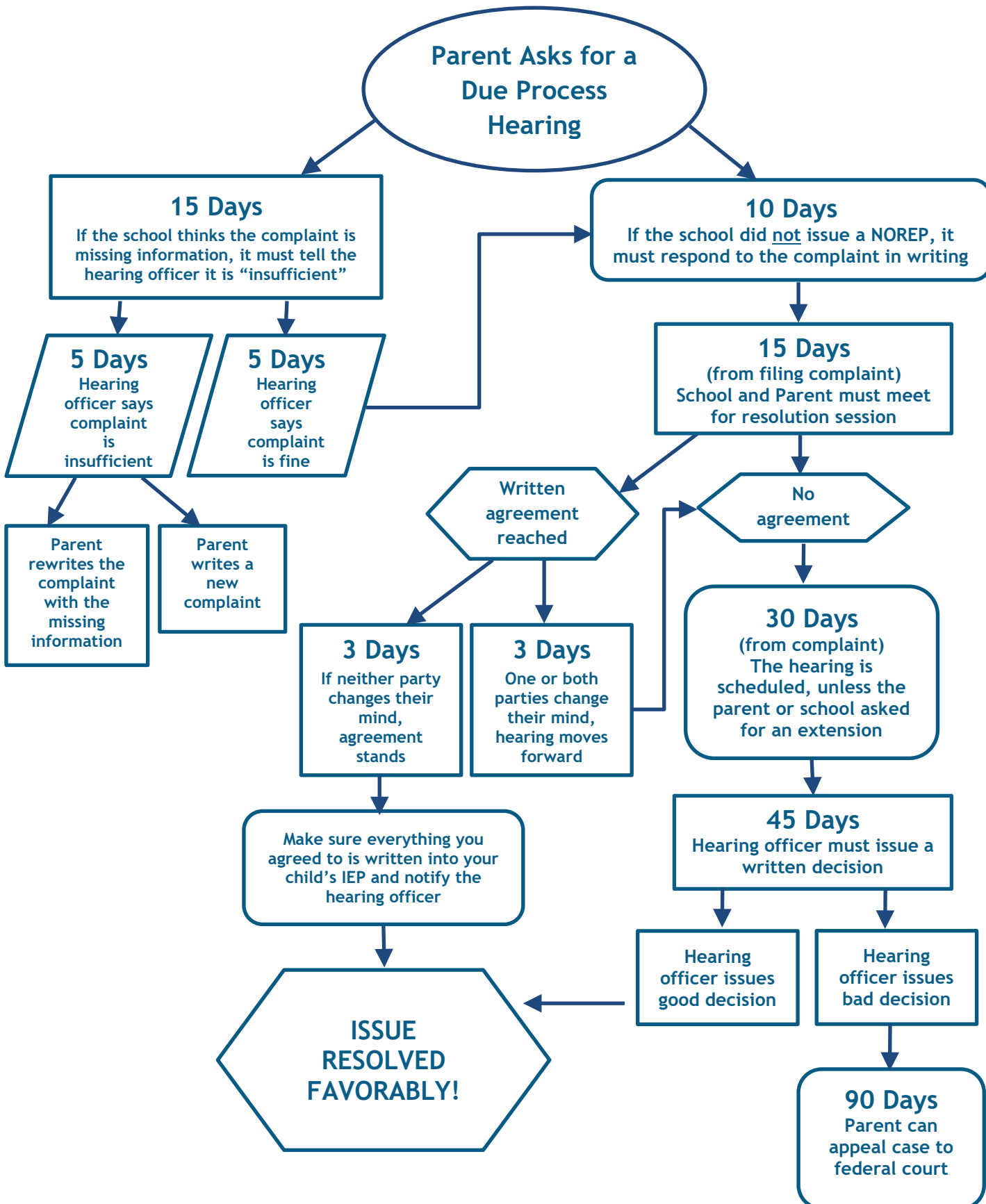
- The hearing officer must make a written decision within **45 days** after the resolution session ends.³¹
- If you do not agree with the decision, you can ask that it be reviewed by another court. You have 90 days to file an appeal in federal court (or 30 days to file an appeal in state court). The 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.³²
- 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.³³ 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.³⁴ 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.³⁵

Once you request a due process hearing, the following timeline³⁶ 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).³⁷ OCR can also address cases where a child is being bullied or harassed because of their disability, race, national origin, religion, or sex discrimination.³⁸

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.³⁹

You can email the letter to 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).⁴⁰ You can learn more about the complaint 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.⁴¹

WHAT IF I NEED ACCOMMODATIONS TO PARTICIPATE?

Parents or caregivers with disabilities also have special protections under the law. Schools cannot discriminate against a person with a disability, including when a parent advocates for a child's special education rights or attends meetings for education.⁴² A person with a disability is someone who "has a physical or mental impairment that substantially limits one or more major life activities."⁴³ Some examples of disabilities include cancer, diabetes, post-traumatic stress disorder, deafness, mobility disabilities requiring the use of a wheelchair or cane, major depressive disorder, and traumatic brain injury.⁴⁴ The definition also includes a person with learning impairments, such as the inability to read.

Schools must provide reasonable modifications, accommodations, and services so that a person with a disability can participate in the child's special education process, including through the steps required to resolve disputes that are described in this fact sheet.⁴⁵ For example, a parent who is deaf may need an interpreter to participate in mediation; a person who has a mobility disability may need a hearing to be located on an accessible floor of the school; and a person who is unable to read may need someone to read a school document to them.

If you need an accommodation, modification, or service to participate in your child's special education meetings, hearings, or other steps described in this fact sheet, you should make a request in writing to the school district, hearing officer, or other person organizing the event (like by email). You can use our self-advocacy tool, [Request for Disability-Related Accommodations for Parents/Caregivers](#), to make this request, and can refer to its list of frequently used accommodations/modifications/services for some examples of supports you can request if you need them. If you are denied the accommodation, modification or service and you disagree with the decision, there are steps you can take to challenge the school (i.e., follow the suggestions in this fact sheet) or you may [file a complaint with the U.S. Department of Justice](#).⁴⁶

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 or call 215-238-6970 (Eastern and Central PA) or 412-258-2120 (Western PA) – or contact another attorney of your choice.

¹ See, e.g., Alfredo J. Artiles et al., *Justifying and explaining disproportionality, 1968-2008*, 76 *Exceptional Children* 279 (2010); Russell J. Skiba et al., *Risks and consequences of oversimplifying educational inequities*, 45 *Educational Researcher* 221 (2016); Hani Morgan, *Misunderstood and Mistreated: Students of Color in Special Education*, 3 *Voices of Reform* 71 (2020), available at <https://www.voicesofreform.com/article/18595-misunderstood-and-mistreated-students-of-color-in-special-education>.

² See U.S. Dept. of Educ., *Dear Colleague: Racial Discrimination in Special Education* (Dec. 12, 2016), available at <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201612-racedisc-special-education.pdf>.

³ See, e.g., Hua-Yu Sebastian Cherng, *If they think I can: Teacher bias and youth of color expectations and achievement*, 66 *Social Science Research* 170 (2016).

⁴ See U.S. Dept. of Educ., *2013-2014 Civil Rights Data Collection: A First Look*, 6, 9 (updated Sept. 29, 2016), www.ed.gov/ocr/docs/2013-14-first-look.pdf; see also U.S. Dept. of Educ., *Dear Colleague Letter: Resource Comparability* (Oct. 1, 2014), www.ed.gov/ocr/letters/colleague-resourcecomp-201410.pdf.

⁵ Torin D. Togut, *The Gestalt of the School-to-Prison Pipeline*, 20 *Am. U. J. Gender, Soc. Pol'y & L.* 163, 164 (2011) (describing the role of bias and power differentials); Patricia A. Massey & Stephen A. Rosenbaum, *'Disability Matters': Toward a Law School Clinical Model for Serving Youth with Special Education Needs*, 11 *Clinical L. Rev.* 271, 281 (2005).

⁶ See U.S. Dept. of Educ., *Dear Colleague: Racial Discrimination in Special Education* (Dec. 12, 2016), at <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201612-racedisc-special-education.pdf>.

⁷ See, e.g., Testimony of Matthew G. Kelly, Basic Education Funding Commission, Sept. 13, 2023, at 2 (“[I]n 2022-23, 43 percent of all Black and Latinx Pennsylvanians were enrolled in a district in the poorest quintile, compared to only 13 percent in the wealthiest quintile”).

⁸ See e.g., Martha J. Coutinho et al., *Gender and Sociodemographic Factors and the Disproportionate Identification of Culturally and Linguistically Diverse Students with Emotional Disturbance*, 27 *Behavioral Disorders* 109, 121 (2002); Paul Morgan et al., *Minorities are Disproportionately Underrepresented in Special Education: Longitudinal Evidence Across Five Disability Conditions*, 44 *Educational Researcher* 278 (2015); Jacob Hibel et al., *Who is Placed in Special Education?*, 83 *Soc. of Educ.* 312 (2010); Paul L. Morgan et al., *Racial and Ethnic Disparities in ADHD Diagnosis from Kindergarten to Eighth Grade*, 132 *Pediatrics* 85, 86 (2013) (finding that Black children are only two-thirds as likely as white children to be diagnosed with attention-deficit/hyperactivity disorder (ADHD)).

⁹ 20 U.S.C. 1415(b)(3); 34 C.F.R. 300.504(c).

¹⁰ 34 C.F.R. 300.506(a).

¹¹ 34 C.F.R. 300.506(b)(4).

¹² <https://odr-pa.org/parent-resources/parent-resource-library/mediation/>.

¹³ 34 C.F.R. 300.506(b)(1).

¹⁴ *Your Guide to Special Education Mediation*, at 5, Office for Dispute Resolution, 2021, <https://odr-pa.org/wp-content/uploads/medguide.pdf>.

¹⁵ 34 C.F.R. 300.506(b)(8).

¹⁶ *Id.* 300.506(b)(7).

¹⁷ *Id.* 300.506(a), (b)(8).

¹⁸ *Id.* 300.151 *et seq.*; *Special Education State Complaint Resolution Procedures*, Penn. Dept. of Educ., 2016.

¹⁹ *Id.* 300.153(c).

²⁰ *Id.* 300.153(b).

- ²¹ *Id.* 300.153(d); *Special Education State Complaint Resolution Procedures*, at 2, Penn. Dept. of Educ., 2016.
- ²² *Id.* 300.152(a).
- ²³ 20 U.S.C. 1415(b)(6)(A).
- ²⁴ *Id.* 1415(b)(6)(B).
- ²⁵ 22 PA. CODE 14.162(b).
- ²⁶ 20 U.S.C. 1415(b)(7)(A)(ii).
- ²⁷ <https://odr-pa.org/parent-resources/parent-resource-library/du-process>.
- ²⁸ 34 C.F.R. 300.518; 22 Pa. Code 14.162(s).
- ²⁹ *Id.* 300.511(C)(1)(i)-(ii).
- ³⁰ 34 C.F.R. 300.512(a)(2).
- ³¹ 22 PA. CODE 14.162(q)(2).
- ³² *Id.* 14.162(o).
- ³³ 34 C.F.R. 300.512(a)(1).
- ³⁴ *Id.* 300.512(a)(1).
- ³⁵ 20 U.S.C. 1415(b)(1); 34 C.F.R. 300.501(a).
- ³⁶ 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).
- ³⁷ Off. for C.R., U.S. Dep't of Educ., *How to File a Discrimination Complaint with the Office for Civil Rights*, at 1, U.S. DEP'T OF EDUC. <https://www2.ed.gov/about/offices/list/ocr/docs/howto.pdf>.
- ³⁸ Off. for C.R., U.S. Dep't of Educ., *Dear Colleague Letter*, U.S. DEP'T OF EDUC. (Oct. 21, 2014), <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-bullying-201410.pdf>.
- ³⁹ Off. for C.R., U.S. Dep't of Educ., *Questions and Answers on OCR's Complaint Process*, U.S. DEP'T OF EDUC., <https://www2.ed.gov/about/offices/list/ocr/qa-complaints.html>.
- ⁴⁰ Off. for C.R., U.S. Dep't of Educ., *How OCR Handles Complaints*, U.S. DEP'T OF EDUC., 2018, <https://www2.ed.gov/about/offices/list/ocr/docs/complaints-how.pdf>.
- ⁴¹ *Special Education State Complaint Resolution Procedures*, Penn. Dept. of Educ., 2016.
- ⁴² 43 U.S.C. §§ 12131-32.
- ⁴³ *Id.*
- ⁴⁴ U.S. Dep't of Just., *Introduction to the Americans with Disabilities Act*, <https://www.ada.gov/topics/intro-to-ada/>.
- ⁴⁵ 43 U.S.C. §§ 12131-32.
- ⁴⁶ U.S. Dep't of Just., *Introduction to the Americans with Disabilities Act*, <https://www.ada.gov/topics/intro-to-ada/>.