



from Equip for Equality's Legal Advocacy Program

EFE FACT SHEET – Special Education

DUE PROCESS HEARINGS AND OTHER CONFLICT RESOLUTION OPTIONS

Introduction

With the implementation of the reauthorized special education law, IDEA 2004, additional options and new guidelines have been added to the IDEA. Several conflict resolution options are available to parents and school districts.

Conflict Resolution Options

If there is a problem that you have not been able to resolve by talking with the school you have several options to go outside the IEP process to get help. Each of the options has different rules so it is important to choose the best place for your concern.

A. File a Complaint with a federal or state education agency

U.S. DEPARTMENT OF EDUCATION
Office of Civil Rights (OCR)
Citigroup Center
500 W. Madison Street
Suite 1475
Chicago, IL 60661
Tel.: (312) 730-1560
Fax: (312) 730-1576
TDD: 312-730-1609
or 1-877-521-2172

If your concern is about a Section 504 issue then this may be a good choice for you. The U.S. Department of Education's OCR is an agency of the federal government that assures that schools comply with section 504 of the Rehabilitation Act. However, OCR does not enforce IDEA. It is unlikely that OCR will resolve your complaint about an IDEA issue. For help deciding whether this is the right place for your complaint, examine the OCR website at <http://www.ed.gov>. Click on "offices" in the left column. Then look in the center column for "Offices for Civil Rights" and click on the "home page" for "Office for Civil Rights." On the home page for Office for Civil Rights on the right hand column click on "How to file a complaint." This will explain how to file a complaint and how to send it online to OCR.

Illinois residents without internet access may send a letter including evidence or proof of the problem to the address listed above.

In your letter to OCR you should include the following information:

- Your name and address (a telephone number where you may be reached during business hours is helpful, but not required);
- The story of your child or group of children that were hurt by the different treatment;
- The name and address of the school that treated your child differently because of a disability; and
- A description of the different treatment with details so that OCR can understand what happened, when it happened, and the reason for the different treatment, such as the child's disability.

Examples of facts that you may want to report to OCR could include:

- Your child is told she has to leave school early because all of the children with a disability are sent home on a bus that comes a half hour before school is over;
- Your child cannot participate in the school play or performance because there is no way for his/her wheelchair to get up onto the stage;
- Any other story where your child is treated differently because she has a disability.

Remember you must have proof, a “paper-trail,” to show what happened and send copies of that “paper-trail” to OCR with your letter.

ILLINOIS STATE BOARD OF EDUCATION

The Illinois State Board of Education
Special Education Services Division
100 North First Street
Springfield, Illinois 62777-0001

To file a complaint with the Illinois State Board of Education (“ISBE”) the state agency responsible for implementing the IDEA in Illinois, you must write a letter explaining the specific failure by the school district and specifying what you are asking the state to do to resolve it. Whatever you are complaining about should have happened within the last year. The state has 60 days to resolve the complaint. The ISBE will review your letter, sending the school a copy of your complaint, and it will ask the school district to send them a report of the school’s position regarding the facts alleged. If you file a complaint it is important that you send proof of the wrongdoing with your letter, preferably proof in the IEP or other school documents. You will not likely be successful in a complaint without a “paper-trail” that clearly shows the failure of the school. Also include your name and child’s name; what school your child attends; and specific details about the alleged violation and the facts upon which your statement is based. To find out more information, see ISBE’s description of the special education complaint investigation process at http://www.isbe.net/spec-ed/html/complaint_investigation.htm

For example, if the school wrote in the child’s IEP, “Johnny needs occupational therapy to benefit from special education but we don’t provide occupational therapy; the parents must get it for Johnny at their expense,” this would be proof or a “paper-trail” of a failure of free appropriate public education. Your complaint letter to ISBE should include a copy of the IEP, referencing the page number identified, (highlight or mark the relevant IEP

page) and a request that ISBE order the school to give Johnny the occupational therapy that Johnny needs.

In the situation described above a parent may also ask the state to order the school to reimburse him/her for the money the parent has spent on private occupational therapy. If this applies, send copies of the bills and proof of payment for the therapy along with your other papers.

State departments of education must monitor local school districts to assure compliance with the IDEA. Regardless of the evidence you supply ISBE and even though you are right, the ISBE may not agree with you and you may lose your complaint. Sometimes the state department will send a letter saying that you can file for a due process hearing.

B. Request Mediation

Illinois State Board of Education (ISBE)
100 N. First Street
Springfield, IL 62777-0001
217-782-5589 (Mediation Coordinator)
Toll Free 866-262-6663

A parent or school district can request the state to provide a mediator at any time. The ISBE pays for the mediation process. Mediation is voluntary, which means that both parties have to agree to mediate in order for the mediation to occur. If either party does not want to mediate then it will not happen. Either party can stop mediation at any time. A date will be set that all parties agree to for the mediation.

The mediator is an impartial person who will try to help both sides come to an agreement that will resolve the issues of concern. Each mediator will set up the mediation meeting differently to address the needs of the people at that meeting. Some things that may happen include:

Opening statements

The mediator will allow each side to tell their story; a concise summary of the problem and what they want to happen as a result of mediation. The non-speaking party must wait to speak only after the speaker has finished. The mediator will discuss this and other ground rules of mediation at the beginning of the session. Mediation may take multiple sessions. Parties may wish to re-convene the mediation if the discussion has been productive and has the potential of resolving one or more issues.

Questions

The mediator may ask questions and try to state the issues in a way that is clear to both sides. Sometimes the problem is that the two sides do not clearly understand the other side's concern, so making sure that everybody agrees on what each side sees as the problem can be a good start to solving the problem.

Caucus

The mediator may suggest meeting with each side alone, which is called a caucus. The mediator must keep confidential anything mentioned in caucus if you ask the mediator

to keep it confidential. You should ask the mediator whether he/she will keep the information private from the other party before you tell it to the mediator.

Mediation Procedure

Mediation can be a very efficient method of resolving a conflict with the school district. Neither party can call witnesses or conduct a trial as in a due process hearing. In mediation, if the parties are genuinely making an effort to resolve the issue, the mediator assists the district and the parents to solve, or partially resolve the problem. Some mediation agreements may not be exactly what either side wants but if both agree to the language of the written agreement, both parties must honor and comply with the mediation agreement. A mediation agreement need not be and is not something that could be “won” at a due process hearing. The agreement can be anything that both sides will agree to. The mediator does not decide the agreement; it is the mediator’s responsibility to help the parties think of possible solutions. Sometimes mediation does not work and the parties may have no other option but to continue to a due process hearing.

Mediation is confidential; anything exchanged at mediation cannot be repeated outside the room, or in a due process hearing. For example, the mediator cannot be called as a witness at the due process hearing. Nothing stated by you or the school can be used as evidence at a hearing. Mediation is binding on both parties so it is very important that any agreement be written out in a very detailed fashion with exactly what each party will do, by when, and what will happen if the party doesn’t do what they have agreed to. Not all parties will agree to a great deal of specificity. If they don’t, you will have to decide whether or not you want to sign the agreement. The vaguer an agreement is the more difficult it is to enforce.

C. DUE PROCESS HEARING

A due process hearing is an administrative hearing, similar to, but not the same as, a trial. It is important to understand that you must prepare to go to trial if you file for a due process hearing. The law does not require parents to have an attorney but it is wise for parents to get an attorney. In Illinois one research study showed that from 1997-2002 parents without representation by an attorney won only a little more than 16% of due process hearings. In the same survey, parents who were represented by an attorney won 49% of the hearings. It is important to find an attorney that is knowledgeable in special education law prior to requesting a due process hearing.

1. Statute of Limitations in IDEA due process hearings

There are very specific rules for due process hearings that must be followed. In Illinois, the IDEA 2004 has limited due process hearing issues and remedies to two years prior to the date of the hearing request. You can ask a hearing officer to correct a problem that has occurred within the last two years, but you may not request relief for a problem that goes beyond that two-year period, unless it is recurring or fits another of some very narrow exceptions.

Specific timelines and requirements parents must follow

There are many other rules that must be followed. It is important to be prepared when you file due process. You must follow the rules in the IDEA and in your state. There are very specific rules for what must be in a due process request letter and in the

proceeding itself. You can find your state's rules by looking at the website for your state's department of education. In Illinois the website is <http://www.isbe.state.il.us/>.

2. Due Process Request Letter

The letter you send to the school superintendent and to the ISBE (in Illinois) must include the following information.

- *Student's Name*
- *Student's Birthdate*
- *Student's Address*
- *Name of attorney, if parent has one*
- *School child is attending and name and address of school district*
- *Description of the nature of the problem* – Explain all of the problems you want the hearing officer to think about in the hearing. Explain each of the problems in detail. Do not think that the hearing officer knows anything about you, your child or the child's disability. Write the due process letter understanding that this will be the first thing the hearing officer reads about your problem and your child. Explain what happened that caused the problem. If there is a problem that you do not include in your letter you cannot talk about it at the hearing, so be sure to include everything you want fixed in your letter. A written chronology in addition to your explanation can be very helpful in understanding the problems.
- *The requested resolution to the extent known and available to the parents at the time:* what you want the hearing officer to order the school to do or stop doing if you win the hearing. It is important to be specific and include everything that you might think the hearing officer should order. If you are not specific with your request the hearing officer will not know what to order. Add at the end of your request, "any additional relief the hearing officer deems appropriate."

3. Hearing Officer

After a parent files for a due process hearing,

The ISBE will choose a hearing officer who will act as the "judge" for the hearing. Check your state rules about how the hearing officer is chosen. In Illinois, both the parents and the school district may request a substitute or "strike" a hearing officer. Each side has one "strike" and five (5) calendar days from the date of receipt of notification of the hearing officer by letter from the ISBE. The five calendar day rule is strictly enforced. If you request a new hearing officer on the sixth day, your request will not be honored. It is very important that you follow the timelines listed. If you "struck" the first hearing officer and do not like the second hearing officer you cannot ask the state to change the hearing officer a second time.

Prior to filing your due process request in the first place, or immediately after receiving notification, it is important to ask parents' groups and anyone else with experience in Illinois due process hearings about a hearing officer. It is also important to read as many decisions from the hearing officer as possible to help you decide whether to strike, or not strike the hearing officer. Hearing officer decisions or at least summaries of decisions should be on the Illinois State Board of Education website, http://www.isbe.state.il.us/spec-ed/html/due_process.htm, or available from the ISBE.

4. Is your Due Process Request "Good Enough?"

The school has ten calendar days to tell the hearing officer that the letter you sent asking for a due process hearing was not "sufficient." This means that the school claims that your letter does not include all the things the IDEA requires. If this happens you will need to send a second letter and make sure that all of the things listed in the IDEA are in your second letter. If the school does not object to your letter, your letter is "good enough" and the hearing timelines will continue.

If the parents ask for a due process hearing the school district has ten calendar days to send a letter to the parents and the hearing officer providing "Prior Written Notice" to the parents about the problems the parents talked about in their letter. The school will not have to send this letter if they already provided "Prior Written Notice" to the parents regarding the issues in the due process request letter.

RESOLUTION MEETING

With the implementation of the IDEA 2004 the school district must schedule and meet with the parents at a "resolution meeting" within 15 calendar days from the date the school district received the hearing request. The resolution meeting should include IEP team members who are "relevant" (those essential or important to resolve the problem). The school must send someone who has decision-making authority to the resolution meeting. At the meeting the parents must be given a chance to explain the problem and the school must have a chance to fix the problem. A school cannot bring a lawyer to a resolution meeting unless the parents bring an attorney. The parents and the school can agree to go to mediation instead of having a resolution meeting. If the problem is not fixed within 30 days from the date of the due process request letter, the parties then move to the second phase of due process and have 45 additional days to complete the due process hearing.

Resolution Meeting Agreement

If the parents and school agree at the resolution meeting about how to fix the problem, then a written agreement will state how the parties intend to fix the problem. Both sides will have 3 calendar days to change their minds about the agreement. After the three days is over the written agreement will be "binding" on both parties. This means that both the school and the parents will have to do what is written in that agreement. Be sure to NEVER sign any papers unless you have read them, understand them, and agree with what they say. If you do not understand something in an agreement ask the school to explain it and WRITE the explanation into the agreement. What the school tells you the agreement means will not matter if it is not written into the agreement. The school will only have to do what is written in the agreement. If you sign an agreement at the resolution meeting, your due process hearing request will be withdrawn and you will not get to go to hearing. You have 3 days to cancel the agreement but if you do not cancel the agreement then your hearing is over. Only sign an agreement if the problem is fixed and you no longer want to go to hearing.

PREHEARING

In Illinois there is a pre-hearing conference that your lawyer will take care of if you have one. If you do not have a lawyer, you will need to prepare for this pre-hearing conference. It usually takes place over the phone with the hearing officer, the school's lawyer and you, if you do not have a lawyer. Before the conference you must fax or

mail to both the school's lawyer and the hearing officer a list of all of the documents you want to use at the due process hearing and a list of all the people you want to be witnesses at the hearing. You can add to your lists until five days before hearing. The hearing officer will give you a sample of the chart you should use to list all of your documents and witnesses. It is important to use the form that the hearing officer gives you.

During the pre-hearing conference you will talk about what the "issues" in the hearing are going to be. This means you will decide what questions the hearing officer will answer. It is important that the questions are written correctly so be sure to listen carefully and speak up if the questions are not correct. Be careful to always be polite and respectful to the hearing officer and to everyone else in the hearing officer's presence.

You will also talk about whether you want the hearing open or closed. In Illinois this choice is up to the parents. In an open hearing anyone can come into the hearing and watch, even people from the school. In a closed hearing no one can be in the hearing except the parties, court reporter, the hearing officer and each witness when it is his/her turn to speak. Parents have to decide what the right choice is for them.

You will set the dates, location, and the times for the hearing during this conference. It will be important to know if any of your witnesses are not able to come on certain days so the hearing is not set for those days. If you have days you are not able to do a hearing, be sure the hearing is not set for those days.

The hearing is usually set to happen at the school or school administrative offices. In Illinois, if you want to have the hearing in another place you must find that place and tell the hearing officer about it. This is called a "neutral site." The rules in Illinois say that parents can have a hearing at a "neutral site" as long as it meets two requirements. It must be free and reasonably convenient. Free means it cannot cost anyone. Reasonably convenient usually is understood to mean that it is close to where the school witnesses will be coming from and has appropriate space for a hearing.

The hearing officer will normally decide who will be going first at hearing and who will go second. Also, be sure the hearing officer sets the "5 day rule" date during the pre-hearing conference so everyone knows when it is.

Five-Day Rule

Five days before the hearing you must give a copy of all of the documents you might use at the hearing to the school's attorney and to the hearing officer. The hearing officer will normally set what day this is during the pre-hearing conference. You must also give the school's attorney your final list of witnesses for the hearing. Normally you cannot have someone be your witness if his or her name is not on this list.

Parent's Evidence Packet

The documents must be in a book form and must be page numbered with a stamp usually called a "bate stamp." This can be found at an office supply store. The list of documents should be the first page in the book so everyone can find pages easily. The book can be a two or three ring binder or bound by an office supply store or printer.

Some hearing officers have specific rules about how they want these document books bound. Be sure to follow the rules your hearing officer gives you. It takes a long time to

organize all of your documents, date-stamp them, copy them and then put them into binders for the school's attorney, the hearing officer, yourself, and the witnesses, so be sure to start early making these books. It is usually easier to make and date stamp one book and then take it to an office copy place and ask them to make three copies on three-hole punch paper or to bind it for you. This will be a cost that the parents will have to pay. The book for the school's attorney must be given to the school's attorney five days before hearing. You should give the hearing officer his book five days before hearing unless he asks you to bring it to the hearing with you. On the day of the hearing you will bring one document book for the witnesses to use at the hearing and set it by where the witnesses will sit. You will need your copy of the document book at the hearing too. If the hearing officer asked you to bring his/her copy of documents to the hearing then bring that one with you too.

HEARING

This is a trial with a few small differences. Usually these hearings happen in a conference room, not a courtroom. There is a hearing officer instead of a judge and there are sometimes different rules about what people can say and what documents can be introduced than in a courtroom.

The hearing will start with opening statements. This is when each side says their side of the story and what they will show with their witnesses. Then the first party will call witnesses and ask them questions. Documents will be used only when questions are asked of a witness about the document. You may need to ask the hearing officer to "admit" the documents into evidence. It will be important to know what your hearing officer will require regarding the documents. It is probably wise to ask during the pre-hearing conference so you can be sure to be prepared. Both sides may challenge documentary evidence, which can occur at either a pre-hearing conference, at the start of the hearing, or when a document is introduced.

If the school goes first at hearing, after they ask questions of their first witness, you may ask questions of that witness. The hearing officer can ask questions of any witness at any time. After both sides are done asking questions that witness is done and the next witness is called. When the school has called all of its witnesses then you will get to call your witnesses. This will continue until both sides have called all of the witnesses. Then each side will get to give a closing argument. This is your last chance to explain to the hearing officer what you proved with your witnesses and your documents. Once the closing argument is completed the hearing is closed. The hearing officer will have ten calendar days to decide the case and send you his decision. If you are not satisfied with the decision you may appeal within 120 days of the receipt of the decision. You should find a lawyer for advice. There is a short time line so you will need to find a lawyer quickly. You can try the Council for Parents Attorneys and Advocates at <http://www.copaa.org> and see if there are any lawyers in your area that can help. You can also look at www.wrightslaw.com in the yellow pages sections for lawyers in your area.



Contact Equip for Equality's Special Education Clinic Helpline
1-866-KIDS-046 (voice) or 800-610-02779 (TTY)
SpecialED@equipforequality.org
www.equipforequality.org

This resource material is intended as a guide for people with disabilities. Nothing written here shall be understood to be legal advice. For specific legal advice, an attorney should be consulted.

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