



Special Education Dispute Resolution

2014

The Six Principles of the Law

- free appropriate public education
- appropriate evaluation
- individualized education program
- least restrictive environment
- parent and student participation in decision making
- procedural due process

Disagreements

- If a parent has a disagreement with the local educational agency (LEA) regarding special education of a student, the parent should first contact the LEA with concerns.
- If the parent contacts the Office for Exceptional Children (OEC), the OEC offers to contact the LEA on behalf of the parent in order to resolve the issue.

Disagreements

- If the parent and the LEA cannot resolve the conflict between themselves then there are more formal processes which are established by the federal and state law to help with the situation.
- The processes are formal written complaints, due process and alternative dispute resolution.

“Child with a Disability”

- The child must meet the definition of one of the 13 categories

AND

- who because of this disability, needs special education and related services

Formal Written Complaints

- An organization or an individual may file a signed written complaint with actions or inactions that have occurred within one year.
- The letter of findings (LOF) must be issued within 60 days (unless extension given).

Filing a Complaint

The complaint must include

- Facts on which the complaint is based
- The original signature of and contact information for the complainant
- The name, address and LEA for the child
- Proposed resolution.

What Happens Next

- The OEC/ODE determines if the complaint contains all of the required information.
- An educational consultant is assigned to determine the IDEIA issues.
- The consultant writes a Letter of Allegations (LOA).
- Mediation is offered.

Responding to a Complaint

- In the Letter of Allegations, OEC will request documentation from the LEA.
- The LEA typically provides a letter of response to the complaint in addition to the requested documentation.
- The LEA may provide additional documentation.

Investigating the Complaint

- OEC will review the documentation provided by both parties.
- The parties may be interviewed either in person or by telephone.
- An onsite visit to the LEA may be conducted.

Mediation

- Mediation may take place until the 60th day or until the LOF is issued.
- The LOF may be extended for mediation
- Mediation does not stop the complaint process.
- An agreement may include a withdrawal.

Letter of Findings

A Letter of Findings is written

- Determines if any violations occurred
- If so, assigns corrective action

Letter of Findings

- The Letter of Findings is reviewed by a three-tiered process (the consultant, the complaint review panel and the assistant director).
- Leadership provides final approval.
- Legal counsel may be involved in the process.

Corrective Action

Corrective Action may include

- Compensatory education
- Professional development
- On-site review by OEC
- Reconvening the IEP team

No Violations?

If OEC finds that the local educational agency was not in violation of the portions of the law stated in the Letter of Allegations, the OEC closes the case with a letter to the complainant and the LEA.

Letter of Findings is Final

- No appeal process
- The parties may file due process after a Letter of Findings is issued

Further Inquiry

If OEC finds violations that were not alleged in the complaint, it may conduct a “Further Inquiry.”

This may be technical assistance, selective review or any other means OEC determines appropriate.

What is Due Process?

Due Process is a hearing process by which an impartial hearing officer (IHO) determines if a student was provided FAPE under the federal and state administrative codes which administer IDEIA.

Initiating a Due Process Hearing

- A parent, school district or a public agency may request a due process hearing.
- The request must allege a violation which has occurred not more than two years before the filing date.

Hearing Request Contents

- The name, address and school of the child
- The nature of the problem
- A proposed resolution of the problem
- The problem must involve identification, evaluation, placement or FAPE of a student

Where Does the Request Go?

- The hearing request must be given to the LEA and the OEC.
- If the LEA files the request, a copy must go to the parent and OEC.

Then What?

Once OEC receives the hearing request, both parties will receive a letter that:

- states the name of the IHO assigned to hear the request and
- offers mediation to the parties.

Mediation

- Mediation may be requested and begun at any time during due process.
- OSEP expects that mediation begins during the first thirty (30) days.

Resolution Session

- If a parent requests the due process hearing, the LEA must meet with the parent within fifteen (15) days to informally attempt to resolve the issues.
- No LEA attorney may attend unless the parents' attorney attends.

Resolution Session (continued)

- The parties may mutually agree to engage in mediation instead of or as part of the resolution session.
- The agreement to waive resolution in lieu of mediation must be signed by the parent(s) and the district representative.
- If the LEA files the hearing request, no resolution session is required.

Resolution Period

- The resolution period is thirty (30) days.
- During the first fifteen (15) days a resolution session must be held.
- The remainder of the resolution period allows the parties to engage in mediation, or resolve issues in other ways.

Resolution Period (continued)

- During the thirty (30) day resolution period, the IHO will contact the parties to begin scheduling the due process hearing.
- If the parties resolve the issues the IHO will expect a withdrawal.
- The IHO will issue a dismissal if the issues are resolved after 30 days.

What Does Sufficiency Mean?

- A party to a due process hearing request may challenge the sufficiency of the hearing request if it does not contain the required information.
- See 34 C.F.R. 300.508(d).

What Happens Next?

- A sufficiency challenge is sent to the appointed impartial hearing officer (IHO).
- The IHO must make a determination of the sufficiency on the face of the complaint within **five** days.

Sufficient

If the hearing request is determined to contain the required information, it is deemed sufficient and the hearing process continues.

Insufficient

- If the complaint is determined NOT to contain the required information, the IHO states in a decision that the complaint is NOT dismissed and outlines the steps the requestor must follow to file a sufficient complaint.
- The timeline for filing a sufficient complaint is discretionary on the part of the IHO.

Insufficient

- If the requestor amends the complaint according to the specifications of the IHO, the hearing process will move forward.
- If the requestor does not amend the request, it is dismissed by the IHO.

After the Resolution Period

- After the thirty day resolution period, if the parties have not resolved the complaint, the IHO steps in to begin the forty-five day hearing process.
- Scheduling of hearing activities may take place during the resolution period.

The Hearing

- The IHO will act as the “judge” and preside over the hearing.
- A court reporter makes an official transcript.
- The IHO issues a decision based on the hearing.
- Extensions may be granted at the request of one or both parties at the discretion of the IHO.

The Appeal Process

- Either or both parties may request that a state level review officer (SLRO) review the hearing record.
- The SLRO has thirty (30) days to review the record and either agree with or overturn (in whole or in part) the IHO's decision.
- Either or both parties may appeal the SLRO decision to the Court of Common Pleas or the Federal Court System.

Expedited Due Process Hearing

A parent may request an expedited hearing **only if the parent disagrees with a** decision regarding placement for disciplinary removals or with the manifestation determination.

Expedited Hearings

A local educational agency may request an expedited hearing only if it believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.

Expedited Hearings

- The resolution session must take place within seven days.
- The resolution period is fifteen days.
- The hearing must take place within twenty school days with determination within ten school days after the hearing.

Alternative Dispute Resolution (ADR)

- Mediation – a neutral third party works with the district and the parents to reach consensus
- IEP facilitation – a neutral third party works with the IEP team to reach consensus

Alternative Dispute Resolution

- Both parties must agree to use either mediation or IEP facilitation.
- Mediation or IEP facilitation may be requested :
 - during due process filings
 - during the formal written complaint process or
 - as a stand alone service.

Alternative Dispute Resolution

- To assist parties to find new ways to work together
- To strengthen relationships
- To keep the focus on the student

Mediation vs. Facilitation

Mediators

- Chair the meeting.
- Ensure conversations are respectful.
- Ensure everyone has an opportunity to speak.
- Assist in writing agreements.
- The law and administrative code require that meetings not be recorded.

Mediation vs. Facilitation

Facilitators

- Do not chair meetings.
- Do not make decisions.
- Are not part of the IEP team.
- Only step in if the IEP team ceases to function in a productive manner.
- Meetings are not recorded unless recordings would be required by ADA.

Mediators/IEP Facilitators

- The OEC maintains a list of mediators and facilitators who have been trained by OEC to work with special education issues.
- The OEC pays for the services of the mediators/facilitators.

Alternative Dispute Resolution

- Both the district and the parent must agree to use one or both of these methods of ADR.
- Parties may engage in ADR as part of a formal written complaint, a due process, or as a stand alone service.

Resources

- **State Support Teams**
- **The Office for Exceptional Children**
- **Parent Training and Information Centers in Ohio**
 - Coalition for the Education of Children with Disabilities
 - Disability Rights Ohio



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You Tube

OhioEdDept