



EARLY DISPUTE RESOLUTION IS NO LONGER OPTIONAL

—
GJ&A
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Alternative Dispute Resolution

Alternative Dispute Resolution

The IDEA encourages alternate dispute resolution and recognizes the potential high cost of traditional dispute resolution procedures.

71 Fed. Reg. 46,701 (2006).

WHAT IS ALTERNATIVE DISPUTE RESOLUTION?

ADR is a voluntary, informal process by which families and school districts can resolve disagreements regarding the needs of students who are eligible for special education and related services.

ADR often avoids costly and time-consuming litigation.

WHAT IS ALTERNATIVE DISPUTE RESOLUTION?

The ADR process uses communication, collaboration, and negotiation to resolve disagreements or disputes. ADR encourages respect while receiving the valuable contributions of all participants.

In turn, the process builds trusting relationships.

ADR focuses entirely on the student, resulting in a mutually-agreeable and timely resolution of differences. This avoids forcing the participants to live with a decision made by a 3rd party, such as a Special Education Hearing Officer or State Education Agency Compliance Investigator.

ADR

DUE PROCESS



A State-Provided
Free Service

VS.

Attorneys, Mediation
and Court Costs

×



Strengthens and
Maintains Relationships

VS.

Can Damage
Parent-School
Relationships

×



Decision Stays with the
IEP Team, Who Know the
Child Best

VS.

Decision goes to
Administrative Law Judge
who does NOT know
the Child.

×



Benefits of Alternative Dispute Resolution

STUDENT FOCUSED:

The ADR Coordinator ensures that the process stays student-focused

CONFIDENTIAL:

All information shared through the ADR process remains confidential unless all parties agree otherwise or as required by law.

NO COST:

ADR is free of cost to families.

Benefits of Alternative Dispute Resolution

LEGAL PROTECTIONS:

Families who participate in ADR and do not come to a resolution with the school district do not give up their due process rights.

SPEEDY RESOLUTION:

The process is much less time-consuming than litigation.

Benefits of Alternative Dispute Resolution

OUTCOME-ORIENTED:

The goal of ADR is for the family and the District to work together to develop mutually agreeable solutions regarding the student's special education and related services.

NON-ADVERSARIAL:

ADR is a non-adversarial process of resolving disagreements.

ALTERNATIVE DISPUTE RESOLUTION

VS

DUE PROCESS

Voluntary informal
meeting

Overseen by a mediator

Funded by the local
SELPA instead of the
family paying legal fees

Goal is to work together
on an agreement

Due process is available
if an agreement is not
reached

Starts with mediation

If mediation doesn't
resolve the dispute, it
moves to a formal
hearing

Each side will need legal
representation

Overseen by a judge

Goal is to decide which
side "wins" and make a
binding legal decision

Local Dispute Resolution

Make district-level dispute resolution a formal process and a higher priority.

Special Education Alternative Dispute Resolution Process

The ____ School District's would like to offer you an opportunity to participate in an Alternative Dispute Resolution Process which is the District's proactive approach to resolving disagreements that may arise with parents of special education student. I have enclosed the following instruments that effectuate this process:

- 1. Parent Brochure on Local ADR;**
- 2. Confidentiality Agreement;**
- 3. Agreement to participate in Local ADR.**

If we are able to resolve the disagreement, we may enter a written agreement to memorialize any agreements or compromises we reach. The terms of the agreement may or may not be incorporated into the student's IEP.

As always, please contact me directly if you have comments or questions on this or any other matter.

Breakout Question

What would Local Dispute Resolution Look Like for your Campus or District?

Facilitated IEP

Idaho has contracted facilitators located around the state who act as neutral third parties and lead the special education meetings.

Facilitated IEP

1. What is a facilitated IEP meeting and when is it appropriate?

In basic terms, a facilitated IEP meeting is an IEP meeting attended by an independent facilitator. During a facilitated IEP meeting, the IEP team convenes to discuss the student's needs and provision of FAPE as it would during a standard IEP meeting. However, the facilitator helps members of the IEP team effectively work together to develop an appropriate IEP.

Facilitated IEP

Because the IDEA is silent on IEP facilitation, it is a voluntary process. This means that districts and parents may request assistance from an IEP facilitator as long as such services are available in the state.

Although a facilitated IEP meeting may be beneficial in many circumstances, districts and parents often turn to IEP meeting facilitators when the IEP team reaches an impasse or plans to discuss a contentious topic.

Facilitated IEP meetings are also common in situations where the relationship between the parents and the district has deteriorated.

Facilitated IEP

2. How do you request assistance from an IEP facilitator?

If IEP facilitation is available in your state, the state or local educational agency will most likely be responsible for appointing an independent, trained facilitator to attend the IEP meeting.

Educators and parents should reach out to SEA or LEA officials to discuss the process of requesting IEP facilitation.

Facilitated IEP

3. Who can act as a facilitator and what is his role in the meeting?

Generally, SEAs and LEAs that offer IEP facilitation will usually assign or hire an independent, trained individual to act as the facilitator. In these cases, the IEP facilitator will likely be a neutral third party who is knowledgeable about IDEA requirements, has experience with the IEP process, and may have expertise in facilitation skills.

Facilitated IEP

If a facilitator attends an IEP meeting, he won't participate as a traditional member of the IEP team. This means that he won't make decisions about the student's education or provide parents or educators legal advice.

Instead, the facilitator may help the IEP team reach a consensus by:

- Keeping communication open between members of the IEP team;
- Ensuring the IEP team focuses on the needs of the student and on the IEP meeting agenda;
- Encouraging collaboration; and
- Resolving conflicts and disagreements.

Benefits of a Facilitated IEP Meeting

- Builds and improves relationships among the IEP team members and between parents and schools.
- Ensures that the meeting is student-focused.
- Models effective communication and listening.
- Clarifies points of agreement and disagreement.
- Provides opportunities for team members to resolve conflicts if they arise.

Benefits of a Facilitated IEP Meeting

- Encourages parents and professionals to identify new options to address unresolved problems.
- Costs less than more formal proceedings such as due process hearings.
- Is typically less stressful than formal proceedings.
- Supports better follow through and follow-up.
- Roles and responsibilities can be discussed and planned.
- Is the IEP meeting, and does not require a separate IEP meeting to formalize agreements that are reached.
- Supports all parties in participating fully

“As a facilitator at facilitated IEP Meetings, it is my responsibility to help keep the lines of communication open among the IEP team members. Hopefully this will lead to the development of an appropriate Individualized Education Program for the student. At times this can be difficult because previous meetings may have been tense and stressful for all concerned. I use various facilitation skills in which I have been trained. I try to help the team establish ground rules for the meeting, aid participants in developing clarifying questions which often lead to mutual solutions and require members of the team to adhere to timelines for completion of the meeting. I do not make the final decisions; those are up to the IEP team and the family is always a key member of that team.”

IEP Facilitator

Due Process Resolution Session

Due Process Resolution Session

A resolution meeting is mandatory when a parent files a due process complaint but is not required by the IDEA when a school district files for due process.

A resolution meeting offers the parents of a child with a disability the opportunity to discuss the basis of the due process complaint and the opportunity to resolve the issues in the complaint.

34 CFR 300.510 (a); and Letter to Casey, 61 IDELR 203 (OSEP 2013).

EARLY RESOLUTION

If an Early Resolution Session is chosen:

- It must be scheduled within 15 days of the Due Process Hearing request.

- Relevant members of the Individualized Education Program (IEP) Team will participate.

- An agreement reached during this session is binding.



Mediation

Mediation

Mediation is the voluntary process by which the parents/guardians and the school district come together in an attempt to resolve the IDEA dispute.

The IDEA strongly encourages mediation as a way to resolve conflict in education law.

34 CFR 300.506 ; and 71 Fed. Reg. 46,604 (2006).

Mediation

ATTORNEYS AT MEDIATION

While the IDEA at 34 CFR 300.512 gives parents the right to bring an attorney to a due process hearing, the provision at 34 CFR 300.506 does not specify required or permitted attendees. If a state elects to prohibit legal representation, a school district may prohibit a parent from bringing an attorney to a mediation session. However, if the parent wishes to bring an attorney to the mediation session and the district objects, the parent may choose to not participate in mediation.

In practice, most mediations involve attorneys. In contrast, LEAs are barred from bringing an attorney to a resolution meeting unless the parent brings one. 34 CFR 300.510 (a)(1)(ii);

Mediation

WHO CAN SERVE AS A MEDIATOR

The state must maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services. 34 CFR 300.506 (b)(3)(i).

The SEA must select mediators on a random, rotational, or other impartial basis. 34 CFR 300.506 (b)(3)(ii).

Mediation

WHO CAN SERVE AS A MEDIATOR

The IDEA's implementing regulations require objectivity on the part of mediators. For that reason, the regulations bar employees of an SEA or LEA, or anyone with a personal or professional interest that would undermine their objectivity, from conducting a mediation.

Due Process

Due Process

34 C.F.R. § 300.508 General. (a)

(1) The public agency must have procedures that require either party, or the attorney representing a party, to provide to the other party a due process complaint (which must remain confidential).

(2) The party filing a due process complaint must forward a copy of the due process complaint to the SEA.

Due Process

34 C.F.R. § 300.508 (b) Content of complaint.

The due process complaint required in paragraph (a)(1) of this section must include—

(5) A description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem; and

(6) A proposed resolution of the problem to the extent known and available to the party at the time.

Due Process

34 C.F.R. § 300.508 (b) Content of complaint.

The due process complaint required in paragraph (a)(1) of this section must include—

- (1) The name of the child;
- (2) The address of the residence of the child;
- (3) The name of the school the child is attending;

A Due Process Complaint Must Include:

1. Child name and address
2. Name of school the child attends
3. A description of the nature of the problem relating to the proposed or refused initiation or charge, including facts related to the problem
4. A proposed resolution of the problem to the extent known and available to the party at the time

Due Process

34 C.F.R. § 300.508 (c) Notice required before a hearing on a due process complaint.

A party may not have a hearing on a due process complaint until the party, or the attorney representing the party, files a due process complaint that meets the requirements of paragraph (b) of this section.

Due Process

34 C.F.R. § 300.508 (e) LEA response to a due process complaint. (1)

If the LEA has not sent a prior written notice under § 300.503 to the parent regarding the subject matter contained in the parent's due process complaint, the LEA must, within 10 days of receiving the due process complaint, send to the parent a response that includes—

(i) An explanation of why the agency proposed or refused to take the action raised in the due process complaint;

Due Process

34 C.F.R. § 300.508 (e) LEA response to a due process complaint. (1)

(ii) A description of other options that the IEP Team considered and the reasons why those options were rejected;

(iii) A description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action;
and

(iv) A description of the other factors that are relevant to the agency's proposed or refused action.

Due Process

34 C.F.R. § 300.508 (f) Other party response to a due process complaint.

Except as provided in paragraph (e) of this section, the party receiving a due process complaint must, within 10 days of receiving the due process complaint, send to the other party a response that specifically addresses the issues raised in the due process complaint.

Due Process Hearing

- Motion
- Exhibits
- Witnesses
- Testifying
- Your Role
- Attorney's Role

State Complaints

State Complaints

Filing a state complaint with the state administrative agency is a long-established alternative to **due process** for resolving educational disputes. The state complaint system offers parents a less costly and more efficient mechanism for resolving certain disputes than impartial **due process** hearings.

State Complaints

STATE COMPLAINT PROCEDURES

State complaint procedures in the IDEA allow parents to file an administrative complaint directly with the state educational agency, which investigates and rules on the claim. 34 CFR 300.151 through 34 CFR 300.153.

Unlike due process complaints, which may be filed only by districts or parents of students with disabilities, a state complaint may be filed by any organization or individual -- even one from another state. 34 CFR 300.151 (a)(1).

State Complaints

STATE COMPLAINT PROCEDURES

The SEA must adopt and implement written complaint resolution procedures for the resolution of complaints filed with the SEA. 34 CFR 300.151 (a).

The SEA must ensure that all relevant information is reviewed and that an independent determination is made as to whether the public agency has violated a requirement of the IDEA with respect to the complaint. 34 CFR 300.152 (a)(4);

State Complaints

The state complaint must include:

1. A statement that a public agency has violated a requirement of Part B of the Act or of this part;
2. The facts on which the statement is based;
3. The signature and contact information for the complainant; and
4. If alleging violations with respect to a specific child:
 - The name and address of residence of the child;
 - The name of the school the child is attending;
 - In the case of a homeless child or youth (within the meaning of Section 725(2) of the McKinney-Vento Homeless Assistance Act (42 USC Sec. 11434a(2)), available contact information for the child, and the name of the school the child is attending;
 - A description of the nature of the problem of the child, including facts relating to the problem; and
 - A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.

State Complaints

BURDEN OF PROOF

OSEP has stated that it would be inconsistent with the IDEA for an SEA to require the individual filing a state complaint to bear the burden of proof in that proceeding.

Once an SEA receives a parent's state complaint, it must gather evidence and make an independent determination. *Letter to Reilly, 64 IDELR 219 (OSEP 2014).*

State Complaints

WRITTEN DECISION REQUIREMENT AND TIMELINE

An SEA must issue a written decision on a complaint within 60 days of the date on which it received the complaint, subject to allowable extensions.

The decision must address each allegation in the complaint and contain:

1. Findings of facts and conclusions; and
1. The reasons for the SEA's final decision.

State Complaints

REMEDIES AVAILABLE

When a state has found a failure to provide appropriate services, the SEA must address:

- The failure to provide appropriate services, including corrective action appropriate to address the needs of the child (such as compensatory services or monetary reimbursement); and
- Appropriate future provision of services for all children with disabilities. 34 CFR 300.151 (b).

The SEA has broad flexibility to determine the appropriate remedy for the resolution of a complaint in which the SEA has found that the public agency has failed to provide appropriate services, including monetary reimbursement and compensatory services. 71 Fed. Reg. 46,602 (2006);

State Complaints

REMEDIES AVAILABLE

SEAs have no obligation to award compensatory education once a district's actions cross a certain threshold. Rather, the state complaint investigator must decide each student's need for compensatory education based on the specific circumstances of each case.

Letter to Lipsitt, 72 IDELR 102 (OSEP 2018).

When You've Tried Everything...

Litigation isn't always avoidable, but doing what's best for the student is always the right thing.

Independent School District of Boise City No. 1

Idaho State Educational Agency (October 2002) 103

LRP 5255

- The Hearing Officer's decision notes that the student's father filed for due process against the school district taking "a shotgun approach to his claims, which cover over two years, this makes all the allegations difficult to characterize."
- Testimony and evidence at the hearing demonstrate that the student had spent most of his life in California living with his mother. He was sent to Idaho to live with his father because his mother could not longer handle him and had remarried.

Boise City No. 1

- ❑ Student was in 6th grade when he moved to Idaho and was eligible for special education through his California IEP under the category of learning disabled and his IEP addressed his diagnosis of ADHD. Idaho reevaluated the student and exited him from special education.
- ❑ The student's father applied for and was granted an inter-district transfer to a school closer to the father's work citing that he was a single father, and it was hard for him to make sure his son got on the school bus in the morning. The transfer was granted for 7th grade.

Boise City No. 1

The student began exhibiting behaviors upon entering 7th grade. Notably, HO's decision states "First of all, many of J's problem behaviors were not incredibly unusual for a new seventh grader. Over the year, he was reprimanded for such infractions as flipping rubber bands, entering the gym even though asked to leave, pushing another boy, talking loudly in class, messing around, etc. To be fair, there were also other infractions involving forgetting homework and materials, etc., that might be more indicative of ADHD disability. But the majority of these infractions did not scream out "disability".

Boise City No. 1

- ❑ The problem started when the school attempted to revoke the student's inter-district transfer. It was at that point that the father began to threaten special education litigation. The hearing offer noted it was "...troubling that the parent saw his demands for the provision of services as a means to foil any attempt to deny a transfer which benefited his own needs."
- ❑ The student was reevaluated and found eligible for special education under the category of OHI due to ADHD. The psychological evaluation found that the student exhibited numerous features of oppositional defiant disorder.

Boise City No. 1

The HO stated:

“While that may seem like a harsh statement, it seems evident that the interplay of these two opposing viewpoints, though unrelated in a special education sense, eventually became the rallying point for both sides, to the probable detriment of the student J. It is difficult to assign blame for this, but it is lamentable, and certainly the student should not be made the whipping post for such acrimony at the adult level. It only goes to show that the child's needs can be lost in the battles of adults.”

Boise City No. 1

“Had the district not taken the high road and relented to the parent's request to deny the principal's revocation of transfer, it would be easier to fault the district.

But their professionalism in the face of threats of litigation, and unacceptable parent conduct towards them, leads to the conclusion that the district intended to address J's needs, despite the level of personal acrimony brought on by the parent.”

Boise City No. 1

“Many times, the school's efforts were thwarted by the parent, who would not allow the school to provide accommodations on the grounds that such accommodations would not be made for J in the "real world". This thought, while understandable in a layman's sense, actually hindered the IEP team and others from doing even more than they did, and the roadblock was the parent. The parent rejected many suggestions for changes or improvements in programming out of hand.”

Boise City No. 1

“The parent's changing demands were difficult to work with. At some times he would argue it was the school's job to hold J accountable and give him tasks like other students, absolutely refusing the school the opportunity to provide accommodations for J. Then, if J did not follow through, he would blame the district for relying on his disabled child to take reports home. At other times he would demand daily progress reports, but then would write a scathing email stating that he is not going to do the district's work for them.”

Boise City No. 1

“The whole of the testimony, which is too voluminous to recite at length, leaves the hearing officer with the distinct impression that district personnel bent over backward to try and appease the parent, even though his demands were inconsistent and at times contrary. The district tried everything suggested by the parent, even to the point of having J's teachers write daily emails home, which should not be necessary in a case of this type. They tried positive reinforcement to help J remain organized and take his medicine, and to turn in homework. Nothing they would do ever met with the approval of the parent.”

Question & Answer



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