

Five Options, 1-2-3



How are disputes resolved under IDEA?

September 2012

There are times when parents and schools simply do not agree on some issue affecting a child's education. They may try informal approaches to resolving the conflict, such as reviewing and revising the child's IEP or holding a facilitated IEP meeting (an approach emerging in the field). When these don't result in agreement on what represents an appropriate education for a child, **the law (IDEA) provides several approaches that parents and schools can use to help resolve the dispute.**

Informal Approaches to Resolution

In all cases where the family and school disagree, it is important for both sides to first discuss their concerns and try to compromise. There are several less formal ways in which parents and school staff might attempt to work out disagreements regarding a child's special education program. The first of these is to *review the child's IEP*. A second is to hold a facilitated IEP meeting.

IEP Review

Under IDEA, the school system (also referred to as the *public agency*) is responsible for determining when it is necessary to conduct an IEP meeting, and the child's IEP Team is responsible for reviewing the child's IEP periodically, but not less than annually, and revising the child's IEP, if appropriate. In addition, the parents of a child with a disability have the right to request an IEP meeting at any time.

What kinds of disputes might be resolved through an IEP review meeting? After the annual IEP review has taken place, if a parent has concerns about his or her child's rate of progress, the appropriateness of the services provided to the child, or the child's educational placement, it would be appropriate for the parents to request that the IEP Team reconvene. At that meeting, the parent and public agency can discuss the parent's concerns and, hopefully, as collaborative members of the IEP Team, work toward a solution that is agreeable to all.

The solution doesn't have to be permanent. It's not uncommon for IEP Teams to agree on a temporary compromise—for example, to try out a particular plan of instruction or classroom placement for a certain period of time that the child's IEP is in effect. During (or at the end of) that period, the school can check the child's progress. Team members can then meet again and discuss how the child is doing, how well the temporary compromise addressed the original concern, and what to do next. The trial period may help parents and the school come to a comfortable agreement on how to help the child.

Because parents and the public agency are partners in ensuring the child is provided an appropriate education, and sometimes will be working together for many years—in some cases, the child's entire school career—it is in everyone's best interest, especially the child's, that the IEP Team members communicate with one another, respectfully and honestly.

Facilitated IEP Meeting

Another informal approach to resolving disputes between parents and schools is **IEP facilitation**.

IEP facilitation is *not* mentioned in IDEA and is not one of the dispute resolution options described in the law's procedural safeguards. However, it is being used to help IEP teams reach agreements in special education decision-making. There are probably others as well, but IEP facilitation is an approach on the rise.

Some SEAs provide parents and school districts with the option of facilitated IEP meetings. When relationships between parents and schools are strained, facilitated meetings may be beneficial. It's important to remember,

though, that this approach is not required or addressed under IDEA and may not be available in your school district.

What is a facilitated IEP team meeting?

A facilitated IEP team meeting is one that includes an impartial facilitator. The facilitator is not a member of the IEP Team but, rather, is there to keep the IEP Team focused on developing the child's program while addressing conflicts as they arise.

The facilitator can help promote communication among IEP Team members and work toward resolving differences of opinion that may occur concerning the provision of a free appropriate public education to a child. The facilitator helps keep the IEP Team on task so that the meeting purposes can be accomplished within the time allotted for the meeting.

What are the benefits of having a facilitator for an IEP Team meeting?

The IEP facilitator can help support the full participation of all parties. The facilitator does not impose a decision on the group; the facilitator clarifies points of agreement and disagreement and can model effective communication and listening for the IEP Team members. When disagreements arise, the facilitator can help encourage the members to identify new options. Most importantly, the impartial facilitator ensures that the meeting remains focused on the child.

Do all school districts have to offer facilitated IEP Team meetings?

No. IDEA does not address IEP facilitation. This means that there is no requirement in IDEA for school systems to provide an impartial facilitator for IEP Team meetings. While the use of IEP facilitation has become more popular, facilitators may not be available in all school districts and are not required.

Formal Approaches

If parents and the school still cannot reach an agreement, it's good to know that IDEA includes specific and formal ways for them to resolve the conflict. These are mediation, filing a complaint, and due process.

Mediation

In mediation, parents and school personnel sit down with an impartial third person (called a *mediator*), talk openly about the areas where they disagree, and try to reach agreement.

Mediation provides a positive, less adversarial approach to resolving disputes between parents and school systems. With the assistance of a skilled and impartial mediator, the parties involved in the dispute can communicate openly and respectfully about their differences as they try to reach accord or compromise. The decision-making power resides with the participants in mediation.

IDEA requires that the mediation process meet certain, specific conditions, as follows:

- Mediation must be voluntary on the part of both parties.
- Mediation may not be used to deny or delay a parent's right to a due process hearing or to deny any other right under Part B of IDEA.
- Mediation must be conducted by a qualified and impartial mediator who is trained in effective mediation techniques.
- The state must select mediators on a random, rotational, or other impartial basis.
- The state must bear the cost of the mediation process.
- An agreement reached by the parties must be set forth in a written mediation agreement.
- Discussions that occur during the mediation process must be confidential. They may not be used as evidence in any subsequent due process hearings or civil proceedings. The parties to the mediation process may be required to sign a confidentiality pledge prior to the beginning of the mediation.

The public agency must make sure that its representative participating in mediation has the authority to enter into a binding agreement on its behalf. A parent may choose to have a friend or advocate attend the mediation session. And, while there is nothing in IDEA that prohibits a parent or public agency from having an attorney attend, the presence of an attorney could contribute to a potentially adversarial atmosphere that may not necessarily be in the best interests of the child.

Filing a State Complaint

A state complaint may be filed by parents or by an organization or individual, including those from another state. Written directly to the State Education Agency (SEA), state complaints must describe what requirement of IDEA the school has violated, among other specific things. They must also be signed.

Each SEA must develop a model form to assist parents and other parties in filing a State complaint. However, the SEA or LEA (local education agency) may *not* require the use of its model forms. Another form or document may be used so long as the form or document includes the content required for filing a State complaint.

The SEA must either:

- resolve the complaint itself, or
- have a system in place where complaints are filed with the school district and parents can have the district's decision *reviewed* by the SEA.

The school system must be given the opportunity to respond to the state complaint, including making a proposal to resolve the complaint.

In most cases, the SEA must resolve the parents' complaint within 60 calendar days. It must issue a written decision that addresses each of the allegations in the state complaint and includes the reasons for the SEA's final decision.

If the SEA finds that the school system has failed to provide appropriate services, the SEA must address the failure, including corrective action (such as compensatory services or monetary reimbursement), if appropriate to address the needs of the child.

Due Process

When due process is used as a way to resolve disputes, parents and the school present evidence before an impartial third person (called a hearing officer), and he or she decides how to resolve the problem based upon that evidence and the requirements of the IDEA.

Filing a due process complaint.

Filing a due process complaint is the first step in the process that may lead to a due process hearing. The complaint must include specific information, as follows:

- the child's name;
- the address where the child resides;
- the name of the school the child is attending;
- a description of the conflict; and
- a proposed resolution of the conflict, to the extent known and available to the person filing the complaint.

The information contained in the complaint must be kept confidential. The party filing the due process complaint must provide a copy to the other party and forward a copy to the SEA. 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 these requirements.

An LEA has specific, time-sensitive responsibilities to carry out when it receives a due process complaint. For example, within 15 days, the LEA must convene a resolution meeting (unless the parties agree to use mediation or

waive the resolution meeting). The purpose of the meeting is to give the parties the opportunity to resolve the issues in the due process complaint without holding a due process hearing.

If the resolution process does not succeed in resolving the dispute, the parties process to a due process hearing where an impartial, trained hearing officer hears the evidence and issues a hearing decision.

The due process hearing.

During this hearing, each party has the opportunity to present their views in a formal legal setting, using witnesses, testimony, documents, and legal arguments that they believe are important for the hearing officer to consider. Since the due process hearing is a legal proceeding, a party will often choose to be represented by an attorney.

Within 45 days of the resolution period expiring, a final decision must be reached in the hearing and a copy of that decision mailed to each of the parties, unless the hearing officer grants a specific extension of this time period at the request of either party.

If the hearing officer's decision is not appealed, it is final. The LEA must implement the decision as soon as possible.

Finding Out the Policy in Your Area

Your state will have specific ways for parents and schools to resolve their differences. If you would like to find out what those are, the local department of special education will probably have the state's guidelines.

You may also wish to call the Parent Training and Information (PTI) center in your state. PTIs are an excellent resource for parents to learn more about special education.

About CADRE



We also highly recommend visiting **CADRE**, the National Center on Dispute Resolution in Special Education, where you'll find a wide range of materials in English and Spanish to help you understand how to resolve disputes in special education.

Find CADRE at: <http://www.directionservice.org/cadre/>