

# Alternate Dispute Resolution

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Under the Individuals with Disabilities Education Act of 2004, or IDEA, students with disabilities are entitled to a Free and Appropriate Public Education, or FAPE. Parents of students with disabilities and school districts will often disagree as to what services are appropriate. While it is always best practice to discuss disagreements and make attempts to reach a resolution at an Individualized Education Plan (IEP) meeting, sometimes a resolution is not possible at the IEP meeting. It is for this reason that alternative options are available for parents who want to dispute a school district's decision regarding the student's education. As you will learn by clicking on the tabs below, there are three (3) formal forums available in Florida for disputing IDEA claims. These are: 1) mediation, 2) state complaint, and 3) due process hearing.

## Mediation

- Mediation is available to parents of students with disabilities who disagree with a decision made by a school district involving any matter related to a proposal or refusal to initiate or change the student's identification, evaluation, educational placement, or the provision of Free and Appropriate Public Education.
- Mediation is free to parents.
- Parents can apply for mediation by contacting the Florida Department of Education and submitting a *Request for Mediation* form.
- Mediation must be voluntary on the part of both parties. That is, both the school district and the parent must agree to use mediation as a way to resolve the dispute.
- Mediation cannot be used to deny or delay a parent's right to a due process hearing (explained below).
- The mediator must be a qualified and impartial mediator who is trained in effective mediation techniques.
- Mediation must be held at a time and location that is convenient to the school district and the parents.
- If the parties reach an agreement during mediation, the parties can execute a written and legally binding agreement enforceable in any State court of competent jurisdiction or in a district court of the United States.
- Mediation is confidential so any statements made during mediation may not be used as evidence in subsequent due process hearings or civil proceedings.

## State Complaint

- State Complaint procedures are available to parents of students with disabilities and other interested persons, including an organization or an individual from another state, to resolve any complaint that a school district has violated a requirement of Part B under the Individuals with Disabilities Education Act of 2004, or IDEA.
- Parents can file a State Complaint for free with the Florida Department of Education.
- The complaint can be in a regular **letter** format but **must include**: a statement that a school district has violated a federal requirement under Part B of the IDEA, the facts of the matter, the

signature and contact information of the one making the complaint. If alleging violations with regard to a specific student, the complaint must include: the name and address of the residence of the student, the name of the school the student is attending, a description of the nature of the problem of the student, and a proposed resolution to the problem.

- Within 60 (sixty) calendar days of a complaint being filed with the Florida Department of Education, the Department must: carry out an independent on-site investigation if the Department deems it necessary; give the the person making the complaint the opportunity to submit additional information; provide the school district the opportunity to respond to the complaint; review all relevant information and make a determination as to whether the school district violated a federal requirement under IDEA; issue a written decision to the person making the complaint containing findings of fact, conclusions, and the reasons for the Department's final decision.
- If any allegation in the complaint is also the subject of a due process hearing request, the Department must set aside that allegation in the complaint until the conclusion of the hearing. Any allegation that is not part of a due process hearing request must be resolved by the Department.
- **State Complaints must contain only those allegations that occurred not more than 1 (one) year prior to the date that the complaint is received by the Department.**

## Due Process

- Parents of students with disabilities or a school district can request a due process hearing regarding any matter involving the student's identification, evaluation, or educational placement, or the provision of Free and Appropriate Public Education (FAPE).
- A due process hearing request must allege violations that occurred not more than 2 (two) years before the date the parent or the school district knew or should have known about the alleged violation that forms the basis of the complaint. There are some exceptions to this time limitation.
- A due process hearing request must contain: the name of the student; the address of the residence of the student; the name of the school the student is attending; a description of the nature of the problem; a proposed resolution to the problem.
- Within 15 (fifteen) days of receiving notice of a parent's due process hearing request and prior to convening a due process hearing, the school district must convene a resolution meeting with the parents and the relevant members of the Individualized Education Plan (IEP) team. The purpose of this resolution meeting is to allow the school district the opportunity to resolve the dispute that is the basis of the due process hearing request.
- **A school district cannot bring an attorney to the resolution meeting unless the parents also bring an attorney.**
- The resolution meeting does not need to be held if: the parents and school district agree to waive the meeting or if the parents and school district agree to use the mediation process instead.
- If the parties reach an agreement at the resolution meeting, the parties can execute a written and legally binding agreement enforceable in any State court of competent jurisdiction or in a district court of the United States.
- If the parties cannot reach an agreement at the resolution meeting, then the parties will go before an Administrative Law Judge who will preside over the matter and will decide on the allegations present on the request for due process hearing.

- Parents may represent themselves at the hearing or may hire an attorney or a qualified representative.
- At the hearing, parents will have the opportunity to present evidence, confront, cross-examine, and compel the attendance of witnesses; to prohibit the introduction of any evidence at the hearing that was not disclosed to the parents at least 5 (five) business days before the hearing; to obtain written or electronic verbatim record of the hearing at no cost to the parents; and to obtain written or electronic findings of fact and decisions at no cost to the parents.
- Parents have the right to have their student who is the subject of the hearing present at the hearing; have the hearing open to the public; and have the record of the hearing and the findings of fact and decision described above provided at no cost to the parents.

## Strategies

- Before selecting an alternate dispute resolution forum, attempt to resolve your concern at the Individualized Education Plan (IEP) meeting by bringing to the table all of the relevant documentation you need to prove your point and/or by inviting other relevant team members (i.e. student's private therapists/physicians, etc...) who can help bolster your position. Remember to let the school know that you want to invite these members and that you have a right to invite these members.
- **Keep excellent documentation.** Keep a great paper trail. This will be helpful not only for IEP meetings but also for mediations, state complaints, due process hearings.
- If you choose mediation, remember that the mediator is unbiased and is there to assist you and the school district reach an agreement. Remain calm and listen carefully to what the school district has to say. Remember that everything you say at mediation is confidential and may not be used as evidence in a future due process hearing request or any other civil proceedings. Typically, the mediator will hand you paper at the start of the mediation for you to take notes. The mediator will ask for this paper back and will trash it and the conclusion of the mediation to further make sure that everything said and done at the mediation remains confidential.
- If you choose the state complaint procedures, remember to state your position clearly in your complaint. If you can, attach documentation to your complaint that will help defend your position.
- If you choose the due process hearing request, hiring a special education attorney to represent you is a wise decision. While you can legally represent yourself, a due process hearing may become very complex and difficult to understand if you do not have a legal background and/or sufficient knowledge of IDEA. Contacting the Florida Bar and browsing through your yellow pages are ways of finding a special education attorney.