

# **ADMINISTRATIVE AGENCY REMEDIES**

## **INTRODUCTION**

From time to time, parents may be dissatisfied with one or another aspect of their child's educational program. When dissatisfied, always first try to resolve differences with the school system in as informal a manner as possible. Often a meeting with the child's teacher or principal will get the quickest and best results. When informal methods do not work, more formal ones, such as a due process hearing, may be necessary.

## **INFORMAL RESOLUTION PROCEDURES**

The first course of action in resolving differences with school personnel should be a phone call and/or a visit. At an informal meeting with the teacher and/or the principal, you can clearly and calmly explain the problem and, if possible, offer what you believe would be a solution to the problem. If school personnel agree with your position you can follow up your phone call or meeting with a letter outlining the problem and reiterating the agreed-upon solution. If school personnel agree that there is a problem but offer a different solution, you may wish to consider the proffered solution. You may accept the school system's solution, accept it on a trial basis, or attempt to compromise with school personnel. You may ultimately agree upon a solution that incorporates some of the school system's ideas and some of your own. If attempts to resolve the problem at the school level do not work, you may next wish to contact the Special Education Supervisor at the parish level. In larger parishes there may be a designated Complaint Management Officer.

In situations where you and school officials cannot settle your differences through informal meetings and negotiations, you will need to decide whether to accept the school's position or to have an outside party settle the argument. Even where you are not satisfied with the school official's final offer, you still may not be ready for an impartial due process hearing.

## **MEDIATION**

In situations where there appears to be a chance of resolving a dispute without a due process hearing the Louisiana State Department of Education makes available a process of mediation. Mediation is voluntary and available only if both you and the school district agree to it. It cannot be used to delay or deny a parent's right to a due process hearing. The state pays the costs of mediation.

In mediation, a mediator, trained and selected by the Department of Education, will talk with you and school personnel, separately and together. The mediator may suggest compromises, or may advise one side or the other that it is clearly wrong, or the official may take some other approach. Sometimes mediators prefer that lawyers not participate, but most of the time you will be allowed to have counsel with you at the mediation session. Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings. The parties may be required to sign a confidentiality agreement prior to the mediation.

You have the choice about whether to ask for mediation, whether to accept mediation if it is offered to you, and whether to accept the proposal of the mediator. **You cannot be forced to accept mediation or to accept the results.** An advantage of mediation is that it gives you one more chance to try to get your problem resolved without going through the time, trouble, expense, and stress of a due process hearing. If the law is clearly on your side or the school's side, the mediator might so advise you and the school officials. School personnel might accept such advice from a mediator, even if they do not agree with you. However, if agreement is not very likely, mediation might simply turn out to delay a solution to your problem. You always have the right to ask for a due process hearing, so if mediation appears unlikely to succeed, you do not have to go on indefinitely -- you can simply ask for a hearing.

If mediation is successful, an agreement is drawn up by the mediator and is signed by both you and the school officials. In some cases the agreement may specify that it is a settlement of all outstanding legal claims. Both parties are honor bound to make a good faith effort to implement the agreement, although there are no real remedies for a failure to do so. If you and the school district have a written mediation agreement and the school district fails or refuses to implement it, you should consider another method of dealing with the school district; for example, filing a complaint with the Louisiana Department of Education, OCR, or filing for a due process hearing.

## **COMPLAINT MANAGEMENT SYSTEM**

If you feel your school district is violating the educational rights of your child or a number of students, you may file a complaint with the Louisiana Department of Education. **Federal regulations require that the Department of Education review, investigate, and resolve any complaints regarding a school district's special education program within sixty (60) calendar days.**

Complaints may be made via telephone or in writing. It is strongly recommended that you make a written complaint which contains as much specific information as you can

provide and which clearly lists the issues and concerns which need investigation. Include your name, address, and a phone number where you can be reached during the day. You must state that the educational agency has violated a federal or state law regarding the educational rights of an exceptional child. You should also state that you are filing a formal complaint. The original complaint should be mailed to:

**Complaint Management  
Division of Special Populations  
Louisiana Department of Education  
P.O. Box 94064  
Baton Rouge LA 70804-9064**

Complaints can also be made by calling 1-225-342-1192. It is recommended that telephone complaints be confirmed by letter.

Within five working days of receiving the complaint, the state sends the complaining party a letter stating the name of the person assigned to investigate the complaint and the intent of the State to investigate and report its findings. The investigator also sends a letter to the local school system asking for either documentation to prove that no violation took place or a plan of action to correct the violation. Investigations may include written communication, telephone calls, and/or on-site visits. The person who complained should be given the chance to submit additional information about the complaint.

Within sixty calendar days, the state is required to issue a written decision addressing each allegation, and containing findings of fact, conclusions, and reasons for decision. If it is determined that a violation has occurred, the school system will be required to take corrective action within a specified time period. If you do not receive a written decision within 60 days of filing a complaint, you should call the investigator. If the decision does not address all the issues raised, you can ask for a clarification. If you disagree with the findings and conclusions of the investigation, you may seek a review before the Secretary of the U.S. Department of Education.

## **U.S. OFFICE FOR CIVIL RIGHTS (OCR) COMPLAINTS**

If you believe the school has violated Section 504 of the Vocational Rehabilitation Act, you may file a complaint with the United States Department of Education's Office for Civil Rights (OCR). OCR is the federal agency primarily responsible for enforcing Section 504. OCR will usually visit the school to conduct an investigation of your charges. It is important to remember that violations of IDEA are often also violations of Section 504.

The Section 504 complaint must be filed within 180 days from the date when the action about which you are complaining took place. However, OCR can extend the filing period. If it has been more than 180 days since the school district refused to provide a service for your child, you can repeat your request to the school to provide the service. If the school district still refuses to provide the service, you can file a complaint within 180 days from the second request. You can call OCR for assistance in writing your complaint. You may also contact the Advocacy Center. (See "How To Prepare a Complaint to the Office of Civil Rights" at the end of this section.)

You should prepare for the meeting with the OCR investigator assigned to your case. First, organize your records. Be prepared to tell the investigator where he/she can obtain copies of your child's records, including all relevant medical, educational, and psychological information. Give the investigator names, addresses, and telephone numbers of any persons, such as attorneys, nurses, special education professionals, or other parents who can support your complaint. Prepare a short history of your problems with the school district, including a summary of your contacts with the school officials. Make sure to include the names of the school officials and the dates of the contacts. You should be ready to support your complaint by presenting evidence concerning the kind of programs and services your student should be getting. Simply criticizing the program is not enough. Keep your allegations and charges factual. Meeting with the investigator is not required, but it is helpful.

Do not hesitate to monitor OCR's investigation of your complaint. Call or write a short letter checking up on the progress of the investigation. Also, keep OCR informed of any changes with respect to your child's program or evaluation. Always keep copies of any letters or other documents you send to or receive from OCR.

There are some risks involved in filing a complaint with OCR. For example, once you file a complaint with OCR, you may have to wait until it has finished its investigation before you can file a lawsuit. However, most courts will not make you wait until the OCR investigation has ended. On the other hand, OCR may suspend its investigation if a due process hearing or lawsuit is pending.

Do not expect OCR to begin investigating your complaint immediately. It is not unusual for them to take several weeks before even beginning to look into some complaints. However, OCR must send you a letter saying that they have received your complaint and stating when they will start to investigate your complaint. Allow OCR two weeks to reply to your complaint. If you have not heard from them in two weeks, write a follow-up letter asking when they will respond to your original complaint. If you do not get an answer within a reasonable time, write to the Office

for Civil Rights in Washington D.C. about the regional office's failure to act on your letters.

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**At the time this booklet was published, Bulletin 1706 was being revised. The sections mentioned were correct at the time of publication of this booklet. However, when the revision of 1706 is complete, some of the section numbers may be different from those listed.**

**For state regulations concerning complaint management see: Bulletin 1573 and Bulletin 1706, §302. For information concerning OCR see: 45 C.F.R. §84. For information on mediation see: 34 C.F.R §300.506.**

## **HOW TO PREPARE A COMPLAINT TO THE OFFICE OF CIVIL RIGHTS**

If you have reason to believe that an organization which receives money from the Department of Education is treating you unfairly because of your race, national origin, sex, handicap or age, you can file a complaint by writing to:

**United States Department of Education  
Office for Civil Rights, Southern Division  
1999 Bryan Street, Suite 2200  
Dallas, TX 75201**

Your letter must contain the following:

- 1) Your name, address and telephone number.
- 2) Basis on which you believe you or others may have been discriminated against. Please specify what you believe is the basis of the alleged discrimination (i.e., race, national origin, color, sex, handicap or age).
- 3) Person(s) affected by the discrimination. You may name an individual, provide lists of individuals or describe a group of persons.
- 4) Name and address of the organization (school board, public school, university, vocational school, governing board or other institution) you believe is discriminating.
- 5) Approximate date(s) of any act(s) you alleged to be discriminatory.
- 6) A brief description of what happened which you believe was discriminatory. It is important that you be as specific as you can in determining the issue(s) that must be investigated.
- 7) Your original signature.

Any additional information which you believe may be helpful in the investigation of your complaint may be included.

**SAMPLE LETTER**

**REQUESTING MEDIATION**

**(Keep a copy of this letter for your records)**

(Date)

(Name and address of  
Supervisor of Special Education)

Dear (name of Supervisor of Special Education):

We, Mr. and Mrs. (your name), are the parents of (child's name and address of the residence of the child), who was born on (child's date of birth). (Child's name) is currently a student at (name of school) in (name of town), Louisiana.

We have met with representatives of the school district but have been unable to resolve our differences as to the problem (description of the nature of the problem relating to the proposed initiation or change, including facts relating to the problem for (child's name). We therefore are submitting a request for mediation. The resolution that we propose is (include a resolution of the problem).

We look forward to receiving confirmation of this request and a date for this meeting.

Thank you.

Very truly yours,

(Parent's name, address and telephone number)

cc: School principal

A quick checklist of what your letter must include:

- The name of the child
- The address of the residence of the child
- The name of the school the child is attending
- A description of the nature of the problem relating to the proposed change, including facts relating to the problem
- A proposed resolution of the problem

# **IMPARTIAL DUE PROCESS HEARING**

## **INTRODUCTION**

A due process hearing is an administrative hearing which may be held to resolve disagreements between school officials and parents which cannot be settled in a more informal manner. The hearing is conducted by an impartial hearing officer who has been trained by the state in special education law.

A due process hearing may be requested by parents or a school system when a conflict arises concerning the identification, evaluation, educational placement, or the provision of a free appropriate education to an exceptional child or a child suspected of being exceptional.

When a due process hearing is requested on behalf of a student, that student is usually entitled to remain in his/her current program and placement until the issue is resolved, unless the parents and school system agree otherwise. This is called the right to stay-put. In other words, if a school system proposes a change that parents disagree with, and the parents request a due process hearing to challenge the proposed change, the change does not take effect until the issue is resolved via due process proceedings. There are a few limited exceptions to this rule for situations involving weapons, drugs, or extreme danger as determined by a hearing officer or court.

Due process hearings require a great deal of advance preparation, and usually involve expenditures of significant amounts of time, money, and emotional energy. Therefore, they should be invoked only when less formal attempts to resolve problems have failed or are unavailable.

The IDEA introduced a new type of due process hearing, the expedited due process hearing, for cases involving challenges to interim alternative settings or manifestation determinations. Both of these issues revolve around a school's ability to discipline a child with a disability. If you choose to challenge the interim alternative setting or the manifestation determination your child will remain in the interim placement as long as the school is not contemplating any further disciplinary action against the child. If the school proposes to change the child's placement after the interim placement is over, then the child must be placed in his/her current placement (the placement prior to the interim placement) during any proceeding to challenge the school's proposed placement changes. The procedural safeguards that are discussed in this chapter for due process hearings apply to expedited due process hearings except that a state may establish different procedural rules and shorter timelines for expedited hearings.

## **LEGAL REPRESENTATION**

Due process hearings are usually fairly formal and involve rules of evidence and procedures similar to those used in court proceedings. They also require a great deal of advance preparation, including the study and organization of documents, legal research, and preparation of witnesses. While it is not required that parents be represented by a lawyer or paralegal at a due process hearing, experience shows that those who are represented usually do better. Persons trained in legal procedure can assist in preparation of the evidence, can ensure that the facts and evidence are presented to the hearing officer according to the formal rules, and can make any necessary objections and legal arguments for the record. This is important because if the hearing decision is appealed by either party, the reviewer will study the record made at the original hearing. There may not be another chance to present evidence.

In addition, if the hearing decision is appealed to court, all parties will definitely need lawyers. It is an advantage if the lawyer who may later represent parents in court has worked with them from the beginning in the due process hearing.

Because of the short time limits imposed once a hearing is requested, it is important to seek legal advice and representation **before** asking for a due process hearing. A legal representative may be able to assist in resolving problems by means other than a formal hearing, or may advise that particular concerns be documented and other preparations made before a hearing request is made. Many lawyers, even those experienced in special education law, need more than a few days or even a few weeks to adequately prepare for a due process hearing. Therefore, they may decline to represent a parent who seeks them out only after a hearing has been scheduled.

## **FINDING REPRESENTATION**

The school district is required to inform parents of any free or low-cost legal assistance that might be available if the parent requests such information or if either the parent or school system requests a due process hearing.

State and local bar referral associations should have lists of attorneys with interest and/or expertise in education law. Other parents of disabled children may also know of attorneys with experience in these areas. Attorneys whose clients win at due process hearings can recover their fees from the school system. Thus, some attorneys may be able and willing to provide representation for a lower than usual fee (or for no fee) if the case is strong enough that they expect to recover their fees later.

The Advocacy Center may be able to provide representation at due process hearings for cases posing priority issues where no other legal representation is available. Parents may also choose to be represented or assisted at due process hearings by persons other than attorneys, such as paralegals or other persons who are experienced in special education issues. Often it is helpful to have another person present for support during a hearing even if the person is not specially trained.

## **REQUESTING A HEARING**

To request a hearing, a parent should send a written request to the parish superintendent of special education. A sample request letter is included at the end of this section. If a school system requests a hearing, it must provide detailed notice to the parents.

## **SELECTION OF HEARING OFFICER**

When the parish special education supervisor receives a request for a due process hearing, s/he must immediately notify the State Department of Education (SDE), which will assign a hearing officer within two operational days. Hearing officers are to be chosen on a rotating basis from a list of approved persons, taking into consideration the location of the hearing. After a hearing officer is assigned, the local school system must advise the parents in writing within five days. The parents then have three working days in which to approve or disapprove the hearing officer selected. If the first choice is disapproved, the SDE will make another selection. The right to automatically disqualify a hearing officer can be used by the parents only once. However, if the parents believe any proposed officer is not impartial, they may ask for a ruling from the state as to whether s/he should be disqualified. If disqualified by the state, the SDE then selects another hearing officer.

## **TIME AND PLACE OF THE HEARING**

The hearing must be scheduled by the school system at a time and place that is reasonably convenient to the parents and the child.

Because of the time limits in which the hearing officer must make a decision, a hearing is likely to be scheduled within a few weeks of the final selection of the hearing officer. If a proposed hearing date is inconvenient for the parents, they should notify the hearing officer immediately and request another date.

## **RIGHTS AT THE HEARING**

Parents involved in due process hearings must be given the following rights:

- To bring their child;
- To invite the public;
- To bring a legal representative and/or another person who can provide assistance and support;
- To present evidence and witnesses and to question school district witnesses;
- To prevent the use of evidence that was not shared with them at least five working days before the hearing;
- To receive a written record or tape recording of the hearing and
- To receive a written copy of the hearing officer's decision.

## **DECISION OF THE HEARING OFFICER**

The hearing officer is supposed to issue a written decision within forty-five (45) calendar days of the time s/he was chosen unless there is a request and a good reason for an extension of time. **The decision of the hearing officer is final unless appealed.**

### **APPEAL**

If a party is not satisfied with the decision of the hearing officer, an appeal to the state review panel must be made within fifteen working days after receipt of the decision. A written request for a review should be sent by certified mail to the Louisiana State Department of Education's Division of Special Populations, with copies sent to the supervisor of special education and the hearing officer.

The state review panel is composed of three hearing officers from other school systems who will review the hearing record and the evidence and reach a decision within thirty (30) calendar days from the time it receives the record. The review panel may seek additional evidence and ask for legal argument from both sides if it wants more information. The review panel may either affirm the hearing officer's decision, overrule it, or order a new hearing.

**The decision of the review panel is final unless a party files a suit in state or federal court within thirty (30) working days of the decision.**

The court will review the evidence and the record, ask for additional information and argument if needed, and decide if the hearing officer and/or review panel decisions were correct under the law. There are no time lines for court action; if a decision is needed quickly, the party who files may need to ask for an emergency hearing.

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**At the time this booklet was published, Bulletin 1706 was being revised. The sections mentioned were correct at the time of publication of this booklet. However, when the revision of 1706 is complete, some of the section numbers may be different from those listed.**

**For information concerning due process hearings see: Bulletin 1706, §507-515; 34 C.F.R. §300.507-300.513.**

**SAMPLE LETTER**

**REQUESTING DUE PROCESS HEARING  
(Keep a copy of this letter for your records)**

(Date)

(Name and address of  
school superintendent)

Dear (name of superintendent):

We, Mr. and Mrs. (your name), are the parents of (child's name and address of the residence of the child), who was born on (child's date of birth). (Child's name) is currently a student at (name of school) in (name of town), Louisiana.

We have met with representatives of the school district but have been unable to resolve our differences as to the problem (description of the nature of the problem relating to the proposed initiation or change, including facts relating to the problem) for (child's name). We therefore request that a due process hearing be scheduled before an impartial hearing officer so that we may present our position. The resolution that we propose is (include a resolution of the problem).

We would also like to schedule an appointment to examine and copy our child's school records prior to the hearing. Please contact us immediately to schedule this appointment. Our telephone number is (phone number).

We hereby also request that the hearing be scheduled at (preferred time of day) at a location near our home and that the hearing be (open or closed) to persons other than those directly involved.

Thank you.

Very truly yours,

(Parent's name, address, and telephone number)

cc: Superintendent of state schools  
School principal  
Attorney or representative

A quick checklist of what your letter must include:

- The name of the child
- The address of the residence of the child
- The name of the school the child is attending
- A description of the nature of the problem relating to the proposed change, including facts relating to the problem
- A proposed resolution of the problem