



**EDUCATION IS FOR ALL CHILDREN**  
**A Guide for Parents**



**SOLVING PROBLEMS**



**1010 Common Street  
Suite 2600  
New Orleans, La. 70112**

**Phone (504) 522-2337  
Toll Free (800) 960-7705  
TTY (866) 935-7348  
Fax (504) 522-5507**

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*This booklet is dedicated to Lee Ann Vaught.*

After Glow

I'd like the memory of me  
to be a happy one.  
I'd like to leave an after glow  
of smiles when life is done.  
I'd like to leave an echo  
whispering softly down the ways,  
Of happy times and laughing times  
and bright and sunny days.  
I'd like the tears of those who grieve,  
to dry before the sun  
of happy memories  
that I leave when life is done.

Anonymous

Lee Ann Vaught was a positive force for good, who worked tirelessly on behalf of the children she represented. She was a born advocate and teacher.

In fact, Lee began her career as a teacher. After graduating from the University of Mississippi with a major in journalism and English, Lee taught language arts at the middle school level and later taught English and Journalism at the high school level. After teaching at Dominican High School in New Orleans for eight years, Lee felt that she could continue to affect the lives of students in a positive but different way by becoming a lawyer/advocate.

After graduating from Loyola School of Law in 1996, Lee went to work for the New Orleans Legal Assistance Corporation as a Staff Attorney. In the Fall of 1998, Lee joined the staff of the Advocacy Center where she was able to get fully immersed in Special Education law. She had come back to her first love- helping children to reach their full potential through advocacy that was based on solid legal principles and a warm heart. Not very long after Lee joined the Advocacy Center's staff, she was promoted from Staff Attorney to Managing Attorney and took over leadership of AC's Special Education Issue Group. Lee took her work seriously and worked long hours on behalf of her young clients.

Yet, she never let the seriousness of the work she did cloud her days. Everyone at the Advocacy Center, where she worked for over ten years, envied those who were part of Lee's Special Education Issue Group because, whenever they met, the rest of us could hear loud and raucous laughter echoing through the office.

Lee died an untimely death, from cancer and related complications, at age 47 on August 4, 2008. In the sentiment of the poem quoted above, Lee Ann Vaught would want those of us left behind to remember her with happy memories. No problem, Lee. You brought happiness and laughter to all the lives you touched during your short stay on this earth. We dedicate this booklet to you.

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## 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, and because you will have an ongoing relationship with the school system, it is worthwhile to try to maintain an amicable relationship. Nevertheless, when informal methods do not work, more formal ones, such as mediation, filing a formal complaint with the State or with the Federal Office of Civil Rights, a due process hearing, or even litigation, may be necessary.

## INFORMAL RESOLUTION

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. You can request an IEP meeting to discuss your concerns at any time. You can send your request to the principal of the school, and/or to the director of the special education department for your district. The Louisiana School Directory contains the names, addresses, telephone numbers, and fax numbers of school district and state education personnel. This directory can be downloaded from the Internet at [www.louisianaschools.net](http://www.louisianaschools.net). Click on *school directory* at the top right corner of the homepage.

***A sample letter to request an IEP meeting is attached at the end of this section.***

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.

**SAMPLE LETTER**

**REQUESTING IEP MEETING**  
**(Be sure to keep a copy for your records)**

(Date)

(Name of Principal & Title)

OR

(Name of Director / Supervisor of Special Education & Title)

(Address)

Dear (Name of Principal or Director / Supervisor of Special Education):

I am the parent of (name of student), who attends (name of school). I have concerns about my child's educational program, and I request that an IEP committee meeting be held as soon as possible to address these concerns.

Thank you for your help. I look forward to hearing from you within ten school days of the date you receive this letter so we can arrange a time for the meeting.

Sincerely,

(Parent's name, address and telephone number)

cc: (Supervisor or Director of Special Education OR cc Principal)

## 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 bound to implement the agreement, and a written, signed mediation agreement is enforceable in a state or federal court that has competent jurisdiction.

*A sample letter requesting mediation is attached at the end of this section.*

**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

## **FILING A STATE COMPLAINT**

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. **The Department of Education must 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 that contains as much specific information as you can provide and which clearly lists the issues and concerns that need investigation. Include the following information in your complaint:

- include your name, address, and a phone number where you can be reached during the day;
- state that the educational agency has violated a federal or state law regarding the educational rights of an exceptional child;
- outline the facts upon which that statement is based, and
- state in the letter 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 1-225-342-3572, or via facsimile at 225-342-1197. It is recommended that complaints made by telephone be confirmed with a 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 a written decision is not received within 60 days of filing a complaint, the complainant should call the investigator. If the decision does not address all the issues raised, clarification can be requested.

Filing a complaint does not bar the right to file a due process request. If the State complaint involves issues that are the subject of a pending due process hearing request, the State must set aside any part of the complaint that is being addressed by due process complaint until the due process proceeding has concluded. Any issues in the State complaint that are not part of the due process request should be investigated and a determination should be made in the manner and within the time lines outlined above.

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

If it appears that the school has violated Section 504 of the Vocational Rehabilitation Act, a complaint may be filed 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 the 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 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 the child, the parent can repeat the request to the school to provide the service. If the school district still refuses to provide the service, he/she can file a complaint within 180 days from the second request. The parent can call OCR for assistance in writing the complaint, and could also contact the Advocacy Center. (See "How To Prepare a Complaint to the Office of Civil Rights" at the end of this section.)

Preparation for the meeting with the OCR investigator assigned to the case is essential. First, organize the child's records. The parent should be prepared to tell the investigator where he/she can obtain copies of the child's records, including all relevant medical, educational, and psychological information. The investigator should be provided with names, addresses, and telephone numbers of any persons, such as attorneys, nurses, special education professionals, or other parents, who can support the complaint. A short history of the problems with the school district should be

prepared, including a summary of contacts with the school officials, names of the school officials, and the dates of contacts. The parent should be ready to support the complaint by presenting evidence concerning the kind of programs and services the student should be getting. Simply criticizing the program is not enough. Allegations and charges should be kept factual. The meeting with the investigator is not required, but it is helpful.

The parent should not hesitate to monitor OCR's investigation of the complaint. S/he should call or write a short letter checking up on the progress of the investigation. Also, s/he should keep OCR informed of any changes with respect to the child's program or evaluation. Copies of any letters or other documents the parent sends to or receives from OCR should be kept.

There are some risks involved in filing a complaint with OCR. For example, once a complaint with OCR is file, the parent may have to wait until OCR has finished its investigation before a lawsuit can be filed. However, most courts will not make the complainant 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.

OCR will not necessarily begin investigating the complaint immediately. It is common for them to take several weeks before even beginning to look into some complaints. However, OCR must send the complainant a letter saying that they have received the complaint and stating when they will start to investigate. Allow OCR two weeks to reply to the complaint. If the complainant has not heard from them in two weeks, a follow-up letter should be written asking when they will respond to the original complaint. If an answer is not received within a reasonable time, a letter to the Office for Civil Rights in Washington D.C. about the regional office's failure to act may be written.

***A sample OCR complaint is attached at the end of this section.***

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

If you have reason to believe that an organization that 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 that you believe may be helpful in the investigation of your complaint may be included.

# **IMPARTIAL DUE PROCESS HEARING**

## **INTRODUCTION**

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

Parents or a school system may request a due process hearing 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 exceptions to this as it relates to disciplinary actions by the school. More information about those exceptions can be found in Advocacy Center's publication entitled "Discipline".

IDEA 2004 added a requirement that once a parent requests a due process hearing, the school system must convene a resolution meeting that will offer the parties an opportunity to resolve the dispute without proceeding to a hearing. The resolution meeting can be waived with the agreement of both the parents and the school, or by participation in mediation.

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.

Expedited due process hearings are available 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. 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. The school system also has a form for filing a due process request, and a copy of this should be provided to you by the school.*

The due process complaint must include the following information:

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;
4. In the case of a homeless child or homeless youth, available contact information for the child and the name of the school the child is attending;
5. A description of the nature of the problem and 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.

## **RESOLUTION PROCESS**

Within 15 days of receiving notice of a parent's due process complaint, and prior to the initiation of a hearing, the local education agency (LEA) must convene a meeting with the parent and the relevant members of the IEP Team who have specific knowledge of the facts outlined in the due process complaint. The parents and the LEA decide who are the relevant members of the IEP team who should attend the resolution meeting. A representative of the public agency who has decision-making authority must be included. The local education agency may not have legal representation at the meeting *unless* the parent is accompanied by an attorney.

The resolution meeting may not be held if one of the following conditions is met:

1. The parents and the LEA agree, in writing, to waive the meeting and go straight to a hearing, or
2. The parent and the LEA agree to engage in the mediation process.

The purpose of the meeting is for the parents to discuss the due process complaint with the LEA, and to give the LEA the opportunity to resolve the dispute. The resolution period is 30 days from the date of receipt of the complaint, and if the dispute is not resolved within the 30-day resolution period, the due process hearing may occur.

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

If the complaint is not resolved during the resolution period, then the parties will proceed to a 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. 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 have the hearing open to 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, which will begin to run at the end of the thirty (30) day resolution period. **The decision of the hearing officer is final unless appealed.**

## APPEAL

Any party aggrieved by the decision and the findings of the hearing officer has the right to bring a civil action in State or Federal court. The civil action must be filed within ninety (90) days after notification of the hearing officer's decision.

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

### **Award of Attorney Fees:**

1. Award to Parents - the court, in its discretion, may award reasonable attorneys' fees as part of the costs of litigation to the parent of a student with a disability who is the prevailing party.
2. Award to School System, Against Parent's Attorney - the court may also award, in its discretion, reasonable attorneys fees against a parent's attorney to a prevailing school system where the Court finds the action was frivolous, unreasonable, or without foundation, or where the attorney continued the litigation once it clearly became frivolous, unreasonable, or without foundation.
3. Award to School System, Against Parent or Parent's Attorney - the court may award, in its discretion, reasonable attorneys fees *against the parent* or the parent's attorney if the parent's request for due process or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

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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, and some content may have changed.**

**For information on mediation see: 34 C.F.R §300.506.**

**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 concerning due process hearings see: Bulletin 1706, §507-515; 34 C.F.R. §300.507-300.515.**

**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.

(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