Ohio Coalition for the Education of Children with Disabilities (OCECD) Newsletter April - June 2018

DISPUTE RESOLUTION – EXPLORING OPTIONS

This newsletter will explore options that are available to families when there is a disagreement between the parents and their school district which relates to the education of a student with a disability.

Administrative Review: If you disagree with your school district's decision regarding the education of your child with a disability, you can submit a complaint to the district's administration. In response, your district superintendent (or a designee) will conduct an administrative review. This review may include an informal administrative hearing.

If a hearing is held, it must occur at a time and place that works for all required participants. Both you and the district can invite others to attend the review. For example you may want to invite other family members, a friend, someone knowledgeable about special education or a lawyer.

The superintendent will hear both sides of the disagreement and make a decision based on pertinent information presented. Once a decision is reached, the superintendent must notify you, **in writing**, of the decision. This must happen within 20 days of when you first notified the district about your concern.

Note: This process is less frequently utilized than other options of attempted resolution and is not mandatory prior to initiating an alternative form of dispute resolution.

Formal Complaint: A complaint is a formal request to the Ohio Department of Education to investigate potential violations of the Individuals with Disabilities Education Act (IDEA) or the Ohio Operating Standards for the Education of Children with Disabilities. The potential violations must have occurred no more than one year prior to the complaint. An Education Program Specialist (EPS) from the Office of Exceptional Children (OEC) conducts a neutral investigation in order to come to a formal resolution of the issues.

Note: A formal complaint addresses procedural errors on the part of a school district, but may not assist with other disagreements. An example of this difference would be the appropriateness of the amount of time provided for related services. Related services is an IEP "team" decision and cannot be determined by a formal complaint process. However, if the agreed upon services have been written in a child's IEP and have not been provided by the school district, the issue is a procedural error and can be investigated.

Mediation: This is a meeting where parents and schools agree to have a neutral, third party (a professional mediator) who will come to help them resolve any disagreements about the education of a student with a disability or a student who may be suspected of having a disability. Mediation is available to parents and schools any time there is a disagreement.

Although mediation is always offered when a state complaint is filed or a due process hearing is requested, no one has to file a complaint or due process before mediating.

Both the parent and school district must agree to mediate, as well as agree on the selection of the mediator. There is no cost to either party**.**

Note: Mediation is a confidential meeting. Everything said in the mediation meeting remains confidential (private) and cannot be used later. If issues are resolved, a written agreement is completed and signed by both parties. A written agreement is enforceable and may be taken to court if either party does not follow the requirements of the agreement.

Facilitation: Otherwise known as a Facilitated IEP Meeting, Facilitation takes place in an Individualized Education Program (IEP) Team Meeting, Evaluation Planning Meeting, or Evaluation Team Meeting.

The facilitator is a neutral, third party who is not a member of the team and does not make any decisions for the team.

Having a facilitator assists the team in being productive and keeping the focus on the student. Facilitators are professional mediators who have been trained by the Office for Exceptional Children in the special education processes.

Both the parent and the district must agree to the facilitated meeting, as well as the selection of the facilitator.

There is no cost to either party for a facilitated meeting.

Note: Facilitation is not a confidential meeting. A school district is *required* to send the parent an invitation prior to a facilitated meeting indicating the persons who will be in attendance. Requirement of an invitation is mandatory, as for any IEP meeting, to discuss a child's education.

Although facilitated meetings are not required under IDEA as a dispute resolution option, Ohio has offered this option to resolve issues relating to a child's evaluation or IEP, when disagreements arise between parents and school districts.

Due Process Hearing: Another option that parents can utilize to resolve certain concerns about their child's special education with the school district is to submit a request for a Due Process Hearing directly to the district and forward a copy to the Ohio Department of Education. When you do this, you have filed a Due Process Complaint (also called a Due Process request).

A due process complaint may be filed for any matter relating to the evaluation, identification, educational placement, or the delivery of a free, appropriate public education (FAPE), (some exceptions may apply).

The due process complaint must allege that federal or state special education requirements have been violated and must be filed within two years of the date the parent, or public agency filing the complaint, knew or should have known about the alleged special education violation issue.

A due process hearing is a formal proceeding in which an impartial hearing officer is assigned by the Ohio Department of Education to conduct a hearing to resolve the due process complaint.

Note: A public agency must convene a Resolution Meeting within 15 days of receipt of the complaint, unless both parties agree to waive it or agree to mediate.

If a resolution meeting is held, a district may not have an attorney present if a parent does not have attorney representation. Funding for a parent attorney is the sole responsibility of the parent and is not available from either the public agency or the Ohio Department of Education.

Parents are not required to retain an attorney for a due process hearing. However, it is important to understand that in Ohio, lay advocates are not allowed to actively participate with or on behalf of, a parent during the hearing process.

For this reason, as well as others, it may be advisable for a parent to consult with a special education attorney if pursuing a request for a due process hearing.

Ohio | Department of Education

https://education.ohio.gov/

Distinctions, Similarities and Parent's Rights regarding Mediation and Facilitated meetings:

- Mediation is confidential; a Facilitated meeting is not a confidential meeting.
- Mediation and Facilitated IEP meetings must both be agreed upon by both parent and district.
- Choice of mediator, as well as facilitator must be agreed upon by both the parent and the district.
- Mediation does not require a parent invitation to the meeting with all participants' names included. Facilitated meetings require a district to provide a parent invitation to the meeting with all participants listed, as with any IEP meeting or meeting involving your child's education.

- Parents requesting mediation or a facilitated meeting should be prepared for the option they requested. Example: If an IEP team is present at a requested mediation, this is not mediation. If an IEP team is not present for a requested Facilitation, this is not a facilitated meeting.
- Mediations which result in a settlement of the dispute will generally require a signed settlement agreement. The mediator cannot advise parents about their legal rights or how signing the agreement will affect those rights.
- Neither a mediator nor a facilitator can be called as a witness in a due process hearing regarding the dispute where either acted as the neutral third party.
- If the mediation or facilitation fails to resolve the dispute, parents retain all their rights to pursue a complaint or due process.

Additional information regarding Dispute Resolution may be found on the websites below, or by calling OCECD at 1-844-382-5452.

ODE, Office of Exceptional Children: https://education.ohio.gov/Topics/Special-Education

CADRE: https://www.cadreworks.org/

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To remove your name from our mailing list, or if you have questions, please contact ocecd@ocecd.org or call 1-844-382-5452.

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