



Chapter 5

Conflict Resolution

An IEP should be developed through consensus — joint, informed decision-making between the IEP Team members. Parents are considered equal partners with school staff in making these decisions and the rest of the IEP Team must consider the concerns and information that you share with them about your child.

Sometimes, consensus cannot be reached. You and the school district might disagree on a variety of issues: Should an evaluation be done and what tests should be used? What LRE placement should your child be in? What types of related services should your child receive and how often? Is your child making adequate progress towards her IEP goals?

Where do I start if I have a problem?

In general, it's best to try to resolve problems first at the school level. Set up a meeting to talk about your concerns with the school personnel who can solve the problem: the teacher(s), the school principal, the special education coordinator, or the whole IEP Team. If changes are made to your child's services as a result of your advocacy, make sure they are noted in writing in the IEP and get a copy of the amended IEP.

If this informal problem-solving is not successful, there are other options you can pursue. Federal law lays out procedures that you have the right to use to resolve disputes. Which option you choose to use to resolve your dispute depends in large part on the urgency and severity of the problem, the relationships you've had with the school district in the past, and the outcome you're seeking.

What is prior written notice?

Before your child's school takes certain actions regarding her special education services, it must provide you with prior written notice. In Alabama, prior written notice is often referred to a "Notice of Intent Regarding Special Education Services."

Your child's school must provide you prior written notice in the following circumstances:

- Anytime your child's school proposes to initiate or change the identification, evaluation, educational placement, or provision of FAPE to your child; or
- Anytime your child's school refuses to initiate or change the identification, evaluation, educational placement, or provision of FAPE to your child.

The notice must include:

- a description of the action proposed or refused by the school;
- an explanation of why the school proposes or refuses to take the action;
- a description of each evaluation procedure, assessment, record, or report the school used as a basis for the proposal or refusal;
- a description of any other factors which are relevant to the school's proposal or refusal;
- a description of other options considered by the IEP Team and the reasons why those options were rejected;
- resources for you to contact to help you understand your child's special education rights;
- a statement indicating that you have protection under the IDEA's procedural safeguards and the means by which the document outlining those safeguards can be obtained.



This notice must be provided to you a reasonable time before the school takes the action it's contemplating.

Knowing the facts behind why the school is taking (or refusing to take) certain actions in regard to your child's special education programming will put you in a better position to resolve your dispute with your child's school. It may be that, after reflection, you are satisfied with the Team's decision. Or, you might want to pursue the issue with one of the many forms of dispute resolution available to you: mediation, due process and the state administrative complaint. A brief outline of these different options follows.

This outline is not intended to fully describe all the procedural requirements, responsibilities and time lines mandated by federal and state law for each of these dispute resolution mechanisms. You should obtain more information on each of these procedures before you decide to use any of them. Contact a licensed attorney of your choosing, ADAP or the Alabama State Department of Education (SDE) for more information.

■ Mediation

In mediation, a neutral, specially-trained person helps you and your child's school district come to a mutually agreeable solution to a problem involving the identification, evaluation, educational placement or provision of FAPE for your child. A mediator does not have the power to make a decision for either of the parties.

Mediation is always voluntary; you (or your child's school) cannot be forced to participate in mediation. Mediation can't be used to deny or delay your right to a due process hearing.

Any information gathered during the mediation process is confidential and can't be used in subsequent due process or court proceedings.

If you and the school are able to reach an agreement through mediation, that agreement must be put into a legally binding document. The agreement should be signed by you and appropriate school district personnel. Such agreements are enforceable in state or federal court.

If no agreement is reached, mediation is called off.

You can request mediation by contacting the SDE. All mediators are employees of the SDE and are assigned to cases on a rotating basis. The SDE pays for the cost of mediation.

■ Due Process Hearings

An impartial due process hearing is available when you or the school disagrees with the identification, evaluation, educational placement or provision of FAPE for your child. A hearing request must be made in writing to the SDE. The hearing request must include the following information:

- The name of the child;
- The residence of the child and the school she is attending; and
- A description of the nature of the problem, including facts relating to the problem and a proposed resolution to the extent known and available to you at the time you request the hearing.

A copy of the hearing request must also be sent to the other party.

Generally, you must file for a due process hearing within two years from the date you knew, or should have known, about the alleged violation of your child's rights. However, this time line will not apply if you were prevented from requesting the hearing due to specific misrepresentations by the school that it had resolved the problem that forms the basis of your complaint, or if the school withheld information from you that was required to be provided to you.

Once a request for a due process hearing is received, the school must convene a resolution meeting with you and relevant members of your child's IEP team (as determined by you and the school) to give the school an opportunity to resolve the complaint. One member of the resolution meeting team must be someone who has decision-making authority on behalf of the school and who has specific knowledge of the facts identified in the hearing request. The school system may not bring an attorney to the resolution meeting unless you bring an attorney.

If an agreement is reached through the resolution process, you and the school must execute a legally binding agreement that is signed by both parties. This agreement is enforceable in state or federal court. Either party may void the agreement within three business days of the agreement's execution.

You and the school may agree in writing to waive the meeting or you may both agree to participate in mediation in lieu of the resolution meeting.

If the complaint is not resolved through resolution or mediation within 30 days from the date you filed the due process complaint, the hearing may proceed.

At a due process hearing, you have the right to be accompanied and advised by counsel and/or individuals with special knowledge pertaining to children with disabilities.

At the hearing, you and the school will present your positions, call and cross-examine witnesses, and enter documents into evidence before a hearing officer who is assigned by the SDE.

Based on this evidence, the hearing officer will issue his decision.

A hearing officer's decision on whether your child received FAPE must be based on substantive grounds. Where a procedural violation has been alleged, the hearing officer may find that your child did not receive FAPE only if the procedural violations interfered with your child's right to FAPE, significantly interfered with your opportunity to participate in the decision-making process regarding the provision of FAPE, or caused your child to be deprived of an educational benefit.

However, none of the provisions noted above prevents a hearing officer from ordering a school to comply with the procedural safeguard requirements found in the IDEA.

A hearing officer's decision may be appealed in state or federal court. Notice of intent to file a civil action regarding the hearing officer's decision must be filed with all parties to the hearing within 30 calendar days upon receipt of the decision.

During the pendency of any due process or court hearing, your child must remain in her current educational placement, unless you and the school agree otherwise. Your child's current educational placement is the setting in which her IEP is currently being implemented. Your child's right to stay in her current educational placement attaches when a due process complaint is filed. See the Appendix for a copy of the SDE's due process hearing request form.



■ State Complaint Procedures

If you feel that your school has violated your child's rights under the IDEA, you may request an investigation by the SDE through the state's administrative complaint process.

State administrative complaints can address any matter related to the identification, evaluation, placement or provision of FAPE for your child. State complaints may only be filed for violations that allegedly occurred less than one year before the date of the complaint. Your complaint letter must include the following:

- the relevant facts related to how you believe your child's school has violated the law;
- the name and residence of your child and the school your child is attending;
- a proposed solution to the problem, to the extent you can identify a resolution at the time you are filing the complaint; and
- your signature and contact information.

When you mail a copy of the complaint letter to the SDE, you must also forward a copy to your child's school.

In response to your complaint letter, the SDE will offer the school the chance to submit a written resolution statement or a statement of position that addresses your complaint.

You will be given a chance to submit additional information about the allegations you have made.

Federal law requires that you and the school be provided the opportunity to engage in mediation to try to resolve the concerns raised in your complaint. As noted above, mediation is always voluntary. You may decline to go to mediation with the school, leaving the complaint in the hands of the SDE to resolve through its investigation.

The SDE will review all relevant information related to each claim in the complaint and make an independent decision as to whether the school violated your child's rights. The SDE may conduct an on-site investigation in your district.

After the investigation is complete, the SDE will send you a written decision detailing its findings and conclusions. If the SDE finds that the school violated your child's rights, its decision must outline appropriate corrective action (such as compensatory services or monetary reimbursement). The SDE also must ensure the appropriate future provision of services for all children with disabilities.

Barring any exceptional circumstances, the entire complaint process must be completed within 60 days from the receipt of the original complaint.

State administrative complaints may be filed by an organization or an individual.

If any issues in a state administrative complaint are already the subject of a due process hearing, the SDE will set those parts of the complaint aside until the conclusion of the hearing. However, any issue in the complaint that is not a part of a due process action must be resolved through the complaint process. If an issue raised in your complaint was previously decided in a due process hearing involving the same parties, that decision is binding on that issue.

See the Appendix for a copy of the SDE's state administrative complaint form.