



WHEN IS YOUR CHILD WITH A DISABILITY ENTITLED TO COMPENSATORY EDUCATION BECAUSE THE SCHOOL DISTRICT HAS VIOLATED HER RIGHTS?

IMPORTANT: ELC's publications are intended to give you a general idea of the law. However, each situation is different. If, after reading our publications, you have questions about how the law applies to your particular situation, contact us for a referral or contact an attorney of your choice.

A child with disabilities may be able to obtain "compensatory education" - makeup services - if she went without an appropriate program for some period of time. This could be because the child's Individualized Education Program (IEP) was inappropriate to her needs, *or* because the IEP, though appropriate, was not fully carried out by the school. Compensatory education might also be available if there was an illegal delay in evaluating the child for special education and if, as a result, the child did not receive needed services. A child may be entitled to compensatory education because the school district violated the child or family's procedural rights in a significant way; for example, if the school district did not give the family a chance to participate in the development of the child's IEP.

WHAT IS THE PURPOSE OF COMPENSATORY EDUCATION, AND WHAT SPECIFIC SERVICES SHOULD BE PROVIDED?

The purpose of compensatory education is to help the child make the progress that she would have made if an appropriate program had been available. The specific services provided must be tailored to the child's needs. Compensatory education can mean extra instruction or related services (such as therapies) provided during the school year or summer. In other cases, a child may be allowed

to continue to attend school for a period after completing the school year in which she turns 21. Sometimes special materials or other special services tailored to the child's needs are appropriate. The amount of compensatory services provided should reflect the student's specific learning needs, and should relate to the amount of services the student has missed.

WHAT SHOULD I DO IF I THINK MY CHILD IS ENTITLED TO COMPENSATORY EDUCATION?

If you believe your child did not receive an appropriate program for a significant period, you can ask your school district to provide compensatory education. You may want to get an evaluation to help you determine what type and amount of compensatory education your child needs. You can ask that the district do the evaluation, or you can obtain an evaluation from some other source. (For more information on obtaining evaluations and independent educational evaluations, see ELC's Fact Sheets on those subjects. The Fact Sheets and other ELC publications can be obtained from our office, or from our website at the address listed below.)

HOW LONG DO I HAVE TO ACT?

It's important to act promptly once you know that the school district has not provided an appropriate program. A parent must request a hearing within two years of the date that the parent knew or should have known that the school district was not providing the child with an appropriate education unless the parent was prevented from requesting a hearing by a specific school or school district misrepresentation that the problem was solved, or because the school or school district did not give the parent information that it was required to provide under the law. If the problem has been on-going for more than two years, you can still request a hearing, but the Hearing Officer's award may be limited even if you win.

WHAT STEPS CAN I TAKE IF MY SCHOOL DISTRICT SAYS "NO?"

Keeping in mind the time limit discussed above:

- Send a letter, marked "Complaint" to the Division of Compliance, Monitoring and Planning (DOC), Bureau of Special Education,

Pennsylvania Department of Education, 333 Market St., Harrisburg, PA 17126-0333. We recommend this approach *if* it is clear that your child did not receive services that were actually listed on her IEP, or that her evaluation was delayed beyond the legal timelines and she was later determined to be eligible for services. We *don't* recommend this route if your problem is that the IEP was not appropriate, or if it is unclear whether the child was evaluated within the required time or whether the IEP was carried out. (In those situations, try the other options listed below.) The Division will investigate your Complaint and send you a report within 60 *calendar* days. If the Division agrees with you, it will order compensatory services - but it may leave it to the IEP Team (which includes the parents) to decide specifically what services, or how much service, to provide.

- Call the Office for Dispute Resolution (ODR), which operates the Special Education Mediation Service (800-992-4334). Explain that you are having a dispute with your district over compensatory services. ODR will ask the district if it is willing to try mediation. If it is, the office will assign a trained mediator who will hold a meeting at which she will try to help you and the district work out an agreement. You don't have to agree to anything you're not comfortable with, but if you reach an agreement it must be listed on the student's IEP so that the District will be required to provide it.
- If you decide not to try mediation, or if mediation is unsuccessful, write a letter to your principal requesting a "Pre-Hearing Conference." The conference must be scheduled within 10 *calendar* days after your request. At the conference, explain that you think your child should receive compensatory services. The district may be willing to reconsider its position as a result of the conference. (If you'd prefer, you can bypass this stage and go directly to a "Special Education Hearing."

- If the Pre-Hearing Conference doesn't solve the problem, request a "Special Education Hearing." For details on how to

request a hearing and the special education hearing process, see ELC's Fact Sheet entitled *Resolving Special Education Disputes*.

There can be some hurdles involved in obtaining compensatory services, especially if you didn't complain about the problem with the district for a long time. Even more important, in *every* case, you will need to convince your district or a Hearing Officer that your child did not receive appropriate services — not just that her program was less than perfect. Despite these hurdles, however, many children do obtain compensatory services, and those services help the students make up for lost time and progress.

Funding for this brochure was provided, in part, by the Disability Rights Network of Pennsylvania (DRN), pursuant to the Developmentally Disabled Assistance and Bill of Rights Act, P.L. 101-496, and the P&A for Mentally Ill Individuals Act, P.L. 99-319. DRN is located at 1414 N. Cameron Street, Suite C, Harrisburg, PA 17103. Telephone: 800-692-7443 or 717-236-8110. Website: www.drnpa.org.

Prepared by: Education Law Center (Rev. 8/07)
(215) 238-6970 (Philadelphia)
(412) 258-2120 (Pittsburgh)
www.elc-pa.org