



Procedural Safeguards – Options for Resolving Disputes between Parents and School Districts

Division of Compliance	Mediation	Due Process Hearing
<ul style="list-style-type: none"> • When to file a DOC complaint: Parents can file a complaint with the State’s Division of Compliance when their child is not getting the services already listed on the IEP or the school district is not complying with legally required timelines or procedures. DOC does not resolve disputes about a child’s eligibility for special education or the type and amount of services that would be appropriate for the child. <p>Important Points:</p> <ul style="list-style-type: none"> • Parents can call the State’s Special Education ConsultLine at 1-800-879-2301 to request a complaint form. • In general, the complaint must be filed within one year of the violation. There are some exceptions to this rule; call the Education Law Center with questions. • The parents may request “<i>compensatory education</i>” services, which are extra services designed to make up for what the child missed. If you want this remedy, clearly ask for compensatory education on the complaint form. • The state has 60 calendar days to investigate the problem and to issue a report stating whether a violation occurred and what remedy is required. 	<ul style="list-style-type: none"> • When to use mediation: Mediation is a quick, informal method of resolving disputes that is useful when the school district and parents disagree about the appropriateness of a child’s special education program or placement. <p>Important Points</p> <ul style="list-style-type: none"> • To request mediation, call the Office of Dispute Resolution: 1-800-992-4334. • Mediation has an 85% success rate in Pennsylvania. • It takes less time than a hearing. • Mediation is free and optional: If the parents and school district agree to mediate, a trained and impartial person is assigned by the state to meet with both parties and try to resolve the dispute. • A parent can request mediation at any time, but it usually makes sense to request mediation before asking for a due process hearing. • Neither side can bring an attorney, but parents may bring an advocate. • If the parents and school district reach an agreement, it becomes part of the child’s IEP and is legally enforceable (in court or through a DOC complaint). • Mediation discussions are confidential and can not be used as evidence in later due process or court proceedings. 	<ul style="list-style-type: none"> • When to ask for a hearing: Hearings are designed to resolve disputes between parents and school districts over the identification, evaluation, program, or placement of a child. • You might first ask for a Pre-Hearing Conference: an optional meeting that must happen within 10 school days and gives schools and parents a last chance to resolve the dispute before a hearing. <p>Important Points:</p> <ul style="list-style-type: none"> • Parents can request a hearing by checking “I do not approve” on a Notice of Recommended Educational Placement (NoREP). (Simply refusing to sign the NoREP does not count). • Parents can also request a hearing in all letter to the principal & special education director. • The parents have the right to (but are not required to) bring an attorney. The school district will have an attorney. • An impartial hearing officer will decide the case; parents can present evidence, their own expert witnesses, and question the school’s witnesses. • Parents will want to show why the school district’s evaluation, program, or placement is not appropriate and what services would be appropriate. • If the family wins, the attorney’s fees and expert’s costs may be reimbursed.

Procedural Safeguards – Changes effective July 1, 2005

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<p>The new version of the federal law protecting children with disabilities does not appear to change the rules about filing Division of Compliance Complaints.</p> <p>While we have to wait to see whether the new state and federal regulations change the DOC complaint system, ELC does not anticipate any changes.</p>	<p>Changes:</p> <ul style="list-style-type: none"> • Under the new law, mediation is still optional, but parties must try to resolve the dispute either through mediation or at a preliminary meeting (called a “Resolution Session”) before the due process hearing. • The new law makes it clear that discussions in the mediation process are confidential and can’t be used in later due process or court proceedings. • The new law also makes clear that written mediation agreements signed by the parent and school district are enforceable in either state or federal court. 	<p>New: Resolution Session:</p> <ul style="list-style-type: none"> • If the school district and/or the parents do not agree to mediation, the parties must first have a “Resolution Session.” Note: this type of meeting is not entirely new. Currently, parents can request a prehearing conference – which must be scheduled in 10 days - but the school district can refuse to participate. Under the new law, the parents and school <u>must</u> agree to mediation or hold the Resolution Session. • The school district may not bring an attorney to the Resolution Session unless the parents bring an attorney. • If the parents and school district enter a written agreement at the Resolution Session it is legally binding and can be enforced in state or federal court. <p>Other Changes:</p> <ul style="list-style-type: none"> • The new law places more emphasis on ensuring that the parent’s complaint clearly identifies the issues in dispute and clearly proposes a resolution. • Timeline: A parent must request a hearing within 2 years of learning about the action (or refusal to act) that the parent is challenging.

For more detailed information on these procedures and their applicable timelines, visit our website at: www.elc-pa.org
OR call us at: 215-238-6970.