



RESOLVING SPECIAL EDUCATION DISPUTES

***Understanding When and How to Use the New
IDEA Procedural Safeguards System***

TOOLKIT for Parents and Advocates

RESOLVING SPECIAL EDUCATION DISPUTES

***Understanding When and How to Use the New IDEA
Procedural Safeguards System***

TOOLKIT for Parents and Advocates

EDUCATION LAW CENTER

1315 Walnut Street, 4th Floor, Philadelphia, PA 19107

Phone: 215-238-6970 Fax: 215-772-3125

TTY: 215-789-2498

1901 Law & Finance Bldg., 429 Fourth Avenue
Pittsburgh, PA 15219

Phone: 412-391-5225 Fax: 412-391-4496

TTY: 412-467-8940

e-mail: elc@elc-pa.org

website: <http://www.elc-pa.org>

**This Toolkit was made possible with funding from the van Ameringen Foundation.
We thank them for their support and guidance.**

**© 2006 – EDUCATION LAW CENTER
ALL RIGHTS RESERVED**

TOOL 1

New Provisions under IDEA 2004 regarding Resolving Special Education Disputes

	Statute	Regulations
Requirements for Due Process Complaint Notice ("Complaint")	20 U.S.C. § 1415(b)(7)	34 C.F.R. § 300.508
Procedure and timelines for filing a Complaint	20 U.S.C. § 1415(c)(2)	34 C.F.R. § 300.507 and § 300.508
Mediation	20 U.S.C. § 1415(e)	34 C.F.R. § 300.506
Resolution Sessions	20 U.S.C. § 1415(f)(1)(B)	34 C.F.R. § 300.510
Timeline for Due Process		34 C.F.R. § 300.510 and § 300.515.
2 year statute of limitation for filing for due process hearings and exceptions	20 U.S.C. § 1415(f)(3)(C) and (D)	34 C.F.R. § 300.511(e) and (f)
90 day statute of limitation for bringing action in court	20 U.S.C. § 1415(i)(2)(B)	34 C.F.R. § 300.516(b)
Parents or their attorneys pay attorneys fees in limited situations	20 U.S.C. § 1415(i)(3)(B)	34 C.F.R. § 300.517

TOOL 2

WHAT SHOULD I DO FIRST IF THINGS AREN'T WORKING FOR MY CHILD AT SCHOOL?

Parents sometimes disagree with the evaluation, Individualized Education Program (IEP), or placement the school offers their child. Other times, the parents agree at first, but after awhile change their minds because things just do not seem to be working. For example, your child may not be getting enough help to understand his classwork, may still have serious behavior problems, or may not be learning enough in a life skills program. Here are some steps you can take if that happens:

Talk with the child's teacher or other school staff by phone or in person. Ask if the teacher sees the same problems and can suggest any changes in the classroom that might help. Ask to see any assessments (tests) and copies of the child's work. Other things to ask: Are all of the services in the IEP being provided? Does the class have more students than state law permits? Are there some classes or times of day that seem harder for your child? Are the teaching strategies working for your child? Does your child need a "functional behavioral assessment" - an evaluation of the best ways of dealing with his or her behavior? Are there ways the family can help by working with the child at home?

Write to the principal and request an IEP Team meeting to discuss whether changes in the child's IEP would help. At the IEP Team meeting, you can raise the same kinds of issues listed above. You can also ask whether the IEP goals need to be changed; whether the child is making less progress than everyone expected; whether more or different related services are needed; and any other questions you have about the child's IEP and placement.

When you meet with the school staff, here are some things to think about:

- If no one knows what to do differently, perhaps your child needs a re-evaluation. An "instructional" evaluation may identify better strategies to help teach the child, and a "behavior assessment" can show what changes are needed to the behavior program. *Remember, all needed evaluations must be done without cost to the family. (See ELC's Fact Sheet "Evaluating Your Child" for more information.)*

- If you want a re-evaluation, ask to sign the "Permission to Re-Evaluate" form ASAP (at the meeting if possible). Remember, a school district has 60 school days from the day you sign the Permission to Re-Evaluate form to finish the re-evaluation and give you the Report.

- If a re-evaluation will be done, ask if the team can agree to some short-term changes to the IEP for the meantime. A word of caution: Do not rely on what the school district says it will provide to your child. The IEP is like a contract - the school only has to give your child what is written in the IEP. So, make sure the school writes the change into the IEP. (See ELC's Fact Sheet entitled, "Developing Your Child's Special Education Program" for more information on IEPs.)

- If you think there will be problems at the IEP meeting, you may want to ask the school to agree to IEP Facilitation. IEP facilitators do not work for the school (they work for the Pennsylvania Office of Dispute Resolution). A facilitator can come to the meeting and help the school and family solve difficult problems. IEP Facilitators are not Hearing Officers so they CANNOT order the school or parent to do anything. But sometimes having a facilitator at the IEP meeting can lead to a good outcome. For more information on IEP Facilitation, check the ODR website at <http://odr.pattan.net/mediation/IEPFacilitation.aspx>, or call ODR at 1-800-222-3353.

TOOL 3

Facilitated IEP Meetings Fact Sheet



Office for Dispute Resolution

IEP FACILITATION

IEP Facilitation is an option available to parents and school district staff when they both agree that it would be valuable to have a neutral person—the IEP Facilitator—present at an IEP meeting to assist them in discussing issues regarding the IEP. Most IEP meetings do not need the services of an IEP Facilitator. Typically, an IEP Facilitator is brought into those situations where the parents and school district staff are having difficulties communicating with one another about the student's needs. The IEP Facilitator assists in creating an atmosphere for fair communication and the successful drafting of an IEP for the student.

Role of the Facilitator

The Facilitator:

- Helps the IEP team focus on the student's needs.
- With the agreement of all IEP team members, the IEP Facilitator may help create an overall agenda and assist in generating ground rules for the meeting.
- Assists the IEP team to resolve conflicts and disagreements that arise during the meeting. The IEP Facilitator typically does not address disputes unrelated to the IEP.
- Helps to maintain open communication among all IEP team members.
- Models effective communication and listening.
- Helps to keep IEP team members on task and within the time allotted for the meeting.
- Maintains impartiality and does not take sides, place blame or determine if a particular decision is right or wrong.
- Clarifies points of agreement and disagreement.
- Ensures that the meeting is student-focused.
- Does not impose a decision on the group.
- Is not a member of the IEP team.
- Does not chair the meeting or write the IEP.

Benefits of an IEP Facilitation

An IEP Facilitation:

- Builds and improves relationships among the IEP team members and between parents and schools.
- Provides opportunities for IEP team members to resolve conflicts if they arise.
- Encourages parents and professionals to identify new options to address unresolved problems.

IEP FACILITATION

Benefits of an IEP Facilitation

An IEP Facilitation:

- Serves as a more cost efficient mechanism for resolving disputes than more formal proceedings such as due process hearings.
- Is typically a less stressful mechanism for resolving disputes.
- Supports all parties in participating fully.

Family Preparation for IEP facilitation

Good preparation is one key to a successful IEP meeting. The following suggestions may assist you in preparing. Families can:

- Make a list of your child's strengths and needs, and your major concerns about his/her education.
- Prepare a written list of issues you want to discuss and questions you want to ask.
- Consider how your child's disabilities affect his/her education.
- Do you believe your child has been making progress with his/her current program? Make a list of what you think has been working and what has not.
- Do you have a copy of your child's most recent Evaluation Report and IEP? If not, request a copy from the school and review it before the meeting to ensure that it is still an accurate and complete picture of your child.
- Be willing to listen carefully and consider possible solutions and options discussed at the meeting.
- Attend a workshop or training conducted by your local Parent and Training Information (PTI) Center (listed below) to learn about your role and responsibilities as a member of the IEP team. A PTI staff member can answer your questions and help you prepare for the meeting.
 - Parent Education and Advocacy Leadership Center/Pittsburgh (1-866-950-1040)
 - Parent Education Network/York (1-800-522-5827)
 - The Mentor Parent Program/Pittsfield (1-888-447-1431 in PA)
 - Hispanos Unidos para Ninos Excepcionales/Philadelphia (215-425-6203)
- Contact the Special Education ConsultLine (1-800-879-2301) to speak with a Specialist who can help you understand your rights surrounding your child's special education.

IEP FACILITATION

Frequently Asked Questions About IEP Facilitation

How do I request IEP facilitation?

Either parent or district can request IEP Facilitation; however, since the process is voluntary, both sides must agree. When everyone agrees to IEP Facilitation, a request form is completed and signed by parents and the district and then submitted to the Office for Dispute Resolution (ODR). This form is available from ODR, or online at ODR's website (<http://odr.pattan.net>).

When are IEP Facilitations scheduled?

IEP teams interested in IEP Facilitation should submit the completed and signed request form to the Office for Dispute Resolution (ODR) at least two (2) weeks prior to the IEP meeting. ODR will make every attempt to locate a facilitator who is available in the time frame chosen by the IEP team. If no facilitator is available on this date, however, the IEP team may need to reschedule the date or proceed without the facilitator. Just as for any IEP meeting, the IEP Facilitation meeting is scheduled by the school at a time and place that is mutually agreeable to all required IEP team members.

How will I be notified about the IEP Facilitation meeting?

Notification about an IEP Facilitation meeting is the same as any other IEP meeting. The school district is still required to give proper notice of the IEP meeting to the parents, including the purpose, time, location, and list of who has been invited.

Who attends the IEP Facilitation?

Attendance at an IEP Facilitation meeting is the same as any other IEP meeting. The required members of the IEP team attend the meeting, in addition to the Facilitator. As with non-facilitated IEP meetings, parents have the option to invite an advocate or other people who have knowledge or special expertise regarding their child.

Is there any cost for the IEP Facilitation meeting?

No, there is no cost to the parents or the school district for the IEP Facilitation.

What happens if the IEP Facilitation is not successful?

As with any IEP meeting, if the parties to an IEP Facilitated meeting are not able to resolve the disagreements preventing them from drafting a mutually-agreeable IEP, they are free to pursue other forms of dispute resolution such as mediation or a due process hearing.

IEP FACILITATION

Does the IEP Facilitator make decisions for the team?

No. The role of the Facilitator is to make every effort to ensure that the team is communicating so that the IEP team, not the IEP Facilitator, can develop an appropriate IEP for the student. The Facilitator also assists by offering suggestions for resolving conflict that may be preventing the team from agreeing on the various components of the IEP. The members of the IEP team remain the sole decision-makers.

TOOL 4

Facilitated IEP Meeting Request Form

Office for Dispute Resolution

IEP FACILITATION REQUEST FORM

Must be completed and signed by Parent(s) and LEA (Local Education Agency)

Our last IEP team meeting was on (date) _____

An IEP meeting is currently scheduled for _____
 (DATE) (TIME)

Concerns about the IEP (to be completed by the parent(s)):

Concerns about the IEP (to be completed by the district):

Please Print

LEA Name _____

Student's Name _____

LEA Contact Person _____

Student's Date of Birth _____ Exceptionality _____

Address _____

Parent/Guardian Name(s) _____

City _____ State _____ Zip _____

Address _____

Phone () _____

City _____ State _____ Zip _____

Fax # () _____

Phone: Home () _____

Email: _____

Work () _____

Email: _____

Date _____

Date _____

LEA Administrator's Signature _____

Parent/Guardian's Signature _____

(Continued on next page)

IEP FACILITATION REQUEST FORM (continued)

The IEP Facilitation will be held at the following address:

Site Location: _____

Address: _____

City: _____ State: _____ Zip: _____

LEA Contact Person: _____

Phone: _____

Instructions

1. Fill out the information that pertains to you and sign the form.
2. Send this form to the other party to be completed and signed, or submit it directly to ODR. If submitted directly to ODR, we will contact the other party to see if they are willing to work with a Facilitator to develop an acceptable IEP.
3. If parents and the school district fill out this form at the same time, the school district will forward the form to ODR.
4. Once IEP Facilitation is requested and mutually agreed upon, ODR will assign a trained Facilitator.
5. The school district remains responsible to give to the parents the proper invitation to the IEP meeting, including the purpose, time, location, and list of who has been invited.
6. For additional information, contact ODR at (800) 992-4334; fax at (717) 657-5983; or mail inquiries to:

**Office of Dispute Resolution
6340 Flank Drive
Harrisburg, PA 17112-2764**

TOOL 5

Mediation Request Form



Office for Dispute Resolution

MEDIATION REQUEST FORM

Mediation requested by: Parent School District (LEA) Date: _____

Student's Name: _____ Date of Birth: _____

Male Female Student's Exceptionality: _____

Student's School Building/Placement: _____

School District (LEA): _____

Superintendent: _____

School District Contact Person: _____

Title: _____ Phone No.: _____ Ext: _____

Cell No.: _____ Fax No.: _____ Email: _____

Address: _____

Mother: _____
(First name) (Last name)

Father: _____
(First name) (Last name)

Parent Address: _____
Home Phone: _____

Mother (work phone): _____ Father (work phone): _____

Mother (cell phone): _____ Father (cell phone): _____

Mother (email): _____ Father (email): _____

Parent Name (if not living with student): _____

Parent Address (if not living with student): _____

INFORMATION ABOUT THIS MEDIATION:

Please provide a brief description of the dispute below in order to facilitate the scheduling of the mediation.

Parent Issues: _____

School District (LEA) Issues: _____

Has a Due Process Hearing also been requested for this student? NO YES

TOOL 6

DOC Complaints

WHEN SHOULD I FILE A DOC COMPLAINT?

If you (a parent) believe the school is not following the IEP or the school is not following the laws or required timelines, you should file a complaint with the State's Division of Compliance, Monitoring, and Planning (DOC). You can only complain about things that happened within the past calendar year. (So if it is December 2, 2006 you can only complain about things that happened after December 2, 2005). If you also ask for a special education hearing, DOC will not investigate any issues that are also listed in your hearing request. Advocates and advocacy organizations can also file DOC complaints, either about a specific child or about a districtwide or statewide problem. You can even file a complaint against the state!

A parent should not file a DOC complaint about any of the following issues: (1) the school's decision that the child is (or is not) eligible for special education, (2) the amount or type of services the school offers in an IEP, (3) the placement the school offers to a child. For example: if you believe your child needs one hour a week of physical therapy, but the school is only offering an IEP with one hour a month, this is not an issue for a DOC complaint. Why? DOC will not decide whether an IEP is appropriate - you will have to ask for mediation or a special education hearing to settle this question.

Parents can also call DOC's Special Education ConsultLine at 1-800-879-2301 if they have questions about special education law or their child's IEP. (If you call from outside Pennsylvania, dial 717-541-4960 ext. 3332.) The ConsultLine also helps parents with filing DOC complaints, and may refer the parent to outside agencies for more help.

HOW DO I FILE A DOC COMPLAINT?

To file a DOC complaint, you can fill out the new "Complaint Form" that is found at the following website: <http://www.pattan.net/files/Formspdf/ComplaintForm.pdf>. Or, if you don't want to use that form, you can send a letter to DOC.

Either way, the following information must be in the DOC complaint:

1. the child's name, school, and address (or contact information if the child is homeless);
2. a statement that the school (or the state) has broken a special education law

For example: "The school has not followed the law because it took more than 60 days to evaluate my son" or "I believe the school broke the law because it isn't giving my daughter the 2 hours of speech therapy a week that is written in her IEP."

3. any facts you know about the problem

For example: "The speech therapist quit in September and my daughter has not had any therapy even though it is written in her IEP."

4. a proposed solution to the problem (if you can think of one). If you want the school to make up for services the child missed, you should ask for "compensatory education services." Or, you may want to ask the school to reimburse you (pay you back) for services you think the school should have provided.

For example: "I would like DOC to make the school hire a new speech therapist immediately and I want compensatory education services for the speech therapy that my daughter missed."

5. your contact information and signature

You should attach copies of any papers that help explain your problem, such as a copy of your child's IEP, to the DOC complaint form or letter.

DOC complaints should be sent to:

Division of Compliance, Monitoring and Planning
Pennsylvania Department of Education
Bureau of Special Education
333 Market Street
Harrisburg, PA 17126-0333

You must also send a copy of the complaint to the school.

DOC has 60 calendar days to investigate your complaint and issue a report. If the school and parents agree, they can use mediation to solve the complaint (but DOC must still give a report in 60 days unless you agree to give it more time). As part of the investigation, you can give DOC additional information by phone or in writing. The school will also be given a chance to explain itself and to offer a solution to the problem. If the DOC report says that the school broke the law, it must tell the school what it has to do to correct the problem (called "Corrective action"). DOC must follow up to ensure that the school completes all of the "corrective action."

TOOL 7

DOC Complaint Form

NEW

Complaint Form

Please feel free to make copies of this form, use additional paper, or call the ConsultLine at 1-800-879-2301 or the Bureau of Special Education (BSE) at 717-783-6913 for additional copies.

My preferred method of contact by the Adviser assigned to this complaint would be:

- By phone (Number) _____
Best time during normal business hours to call _____.
- In person at a public facility during normal business hours. The location would probably be a school or Intermediate Unit building to permit duplication of documents.

Are you filing this complaint on behalf of a specific child? Yes _____ No _____

Please provide your contact information, relationship to child, and signature.

Name: _____

Address: _____

Phone Number: _____
Home Work Cell

Relationship to child or children:

Parent Attorney Advocate Other

Signature

Date

***NOTE: THIS MUST BE SIGNED FOR BSE TO INVESTIGATE.**

The name and address of the residence of the child, school, and school district.

Child's Name: _____

Date of Birth: _____

Address: _____

Is the child currently in school? Yes _____ No _____

If so, where is the child's current program?

School/School District: _____

Complete only if the complaint is filed on behalf of a homeless child or youth.

Contact Person

Telephone Number

Did the violation occur within the past year? If so, on or about what date?

Date

To clarify my allegations, I would like the Adviser to interview the following person(s).

Name	Occupation/Title	Phone Number/E-Mail Address

Please provide a statement about the violation or issue, which you believe has occurred. Please include a description about the nature of the problem.

Please list the facts that support your statement.

To the best of your knowledge, please suggest a solution to this problem.

You must send a copy of this complaint to the LEA. By signing below, you indicate to BSE that you have provided a copy of the complaint to the LEA.

Signature

Date

**Please return form to: PDE/BSE, Division of Compliance Monitoring and Planning, 333
Market Street, 7th Floor, Harrisburg, PA 17126-0333**

ConsultLine - CRP

Initials

Date

TOOL 8

Steps for Proceeding to a Due Process Hearing

How do I request a hearing?

To request a hearing, you can check the "Due process Hearing" box on a NOREP. But, that is not enough. You must also send a letter, called a "complaint," to the school that includes certain information (you can attach this letter to the NOREP when you send it back to the school). You must also mail a copy of the "complaint" letter to Pennsylvania's Office of Dispute Resolution at: 6340 Flank Drive, Suite 600, Harrisburg, PA 17112-2764. ODR's fax number is (717) 657-5983, and the e-mail address is odr@pattan.k12.pa.us.

You can request a hearing even when you have not been given a NOREP by the school - just write the "complaint" letter and mail it to both the school and to ODR.

What information must a special education hearing request contain?

A special education hearing request or "complaint" letter must contain the following information (in as much detail as possible):

1. The child's name, school, and home address (or contact information if the child is homeless);
2. An explanation of the problem(s)

For example: "The school wants my son to stay in his emotional support class, but for the last 2 years he has been in that class and getting bad grades because he is bored. His therapist says he would do better in a regular classroom where the school work is more challenging. I asked the school to change his class at the last IEP meeting, but they would not agree so I am now asking for a hearing."

3. When possible, any suggestions you have for solving the problems

For example: "I would like my son to be moved to a regular education classroom and given compensatory education for the time he spent in the inappropriate emotional support classroom."

If the school thinks the parent's "complaint" letter is missing some of the required information, it has 15 calendar days to tell a Hearing Officer that it thinks the request is "insufficient." If this happens, the Hearing Officer has 5 calendar days to make a decision and notify the parties in writing. If the Hearing Officer rules that a request is "insufficient," the hearing will not be scheduled. At that point, you can either "amend" your request to add the missing information (see below) or you can start over by writing a new "complaint" letter and sending it to the school and to ODR.

TIP: Before you ask for a hearing in your "complaint" letter, think carefully about the problems that you want the Hearing Officer to decide. The Hearing Officer is only allowed to decide issues that you include in your "complaint" letter - if you forget something you can't bring it up later on unless the Hearing Officer or the school allows you to "amend" your request (see below).

Is there a deadline for requesting a hearing?

A parent must request a hearing within two years of the date that the parent knew (or should have known) about the problems listed in the Complaint. The only exceptions to this rule are when the parent was prevented from requesting a hearing because the school specifically misrepresented that the problem was solved, or because the school did not give the parent information about the problem that it was required to provide under the law. For example, if you want a hearing because you think the school should not have stopped giving your child speech therapy, you must file the complaint within 2 years of receiving the IEP and NOREP that no longer include speech therapy. But, you might be excused for waiting longer than 2 years if the school never gave you a NOREP or IEP telling you the speech therapy was stopping!

TIP: If the problems have been on-going for more than two years, you can still request a hearing but the award you will be given (if you win) may be limited.

Example: you might only win 2 years of compensatory education if the school gave you a NOREP telling you it was changing your child's IEP and you waited 3 years to ask for a hearing.

Can I change my hearing request?

A parent can "amend" a hearing request if one of two things happens: (1) the school agrees to your amendment, or (2) if the Hearing Officer agrees to let you amend the complaint more than 5 calendar days before the hearing was scheduled to start. But, if you amend your complaint the timeline and other requirements for a hearing start over again - which is why it is important to get it right the first time if at all possible.

Does the school have to reply to my hearing request?

If the school has not already given you a NOREP that explains its reasons for each of the actions that you are complaining about in your hearing request, it must send you either a NOREP or a written response to the issues you have raised within 10 calendar days of receiving the "complaint" letter. If the school already gave you a NOREP that covers all the issues, it doesn't have to send you a new NOREP.

What happens after the hearing request and the school district's response?

Within 15 calendar days of receiving the "complaint" letter, the school must schedule a "resolution session." A resolution session is a meeting with the parent and any IEP Team members who have knowledge of the facts in the hearing request. The family can bring an advocate or a lawyer to the meeting. But, if you do not bring a lawyer, the school can't bring its lawyer. The school must send someone to the meeting who has decision-making authority. Any agreement reached at the meeting must be put in writing and signed by the parties. After the meeting, the parent and school have three business days to change their minds and cancel the agreement. If the school doesn't follow the agreement, you can go to court to ask a judge to force them to follow it.

There are two ways to skip the resolution session. If you have already had a mediation session about the issues in the "complaint" letter, you can skip the resolution session. Or, the parent and the school can agree in writing to skip the resolution session.

There are no rules that protect the confidentiality of what is said by the participants at the resolution session, so you can use the information at the due process hearing if the issue is not resolved at the resolution session and the school can do the same. If you and the school want to keep what is discussed confidential, you can enter into a confidentiality agreement, but it is not required.

When does the hearing begin?

The resolution session and mediation are designed to help the parties avoid a hearing. If the problem is not resolved, the hearing can be scheduled if:

- It has been 30 calendar days after the school received the parent's "complaint" letter - if the parent went to a resolution session and doesn't think the problem was fixed.
- It has been 15 calendar days since the school received the parent's "complaint" letter and the school has not scheduled (or has failed to show up at) a resolution session, the parent can ask the Hearing Officer to schedule the hearing.

However, the hearing will not start if the parent skips a resolution session. In fact, if the school can show that the parent hasn't cooperated in scheduling the resolution session (or has failed to go to the session), the school can ask the Hearing Officer to dismiss the complaint. If this happens, you will have to start the hearing process over with a new "complaint" letter.

What rules apply at the hearing?

The family (and the school) has the right to bring a lawyer to the hearing. The family may also bring non-lawyers who have special knowledge or training about the problems of children with disabilities with them to consult. The family must be given access to their child's school records before the hearing. The family (or the school) may ask the Hearing Officer to order (subpoena) a person to attend the hearing as a witness.

Five business days before the hearing, the family and school must exchange a list of all documents and witnesses that they want to use at the

hearing. The school and family must also give each other copies of any evaluation reports that will be shown to the Hearing Officer at the hearing. If you don't follow this rule, the Hearing Officer can stop you from using the documents or witnesses at the hearing.

TIP: If you want to ask questions of a school employee at the hearing, and they aren't on the school's witness list, ask the Hearing Officer to order that person to come to the hearing and testify.

How long does it take to finish the hearing and get a decision?

Once the timeline for scheduling the hearing begins, the Hearing Officer must make a written decision based on the hearing within 45 calendar days. If there are a lot of witnesses, it can sometimes take a couple of days to finish a hearing. The Hearing Officer can extend (or refuse to extend) the 45 day rule if you or the school ask him to. Once the Hearing Officer makes his decision, the school must either appeal or follow the decision. If the school does not appeal and doesn't follow the decision, then you can enforce the decision by filing a DOC complaint or by going to court.

TIP: If you settle the dispute with the school before the hearing, you can ask the Hearing Officer to put the settlement "on the record." But neither the Hearing Officer nor DOC will enforce settlements. The only way to enforce a settlement is by going to court. You will also lose your chance to have the school pay for your lawyer's fees by settling, unless the school agrees to pay the fees as part of the settlement.

TOOL 9

Due Process Complaint Notice Form

Due Process Complaint Notice

Today's Date: _____

Requested by: Parent LEA

Name of Person Completing this Notice: _____

Relationship to Student: _____

Phone: _____

It is your responsibility to notify the opposing party of your request for due process by sending to them a copy of this Due Process Complaint Notice at the same time it is filed with the Office for Dispute Resolution.

Has the opposing party been provided a copy of this request? Yes No

If you require special accommodations to participate in the due process hearing, you must contact the LEA with your special needs.

Student Information

Last Name: _____

First Name: _____

Date of Birth: _____

Gender:

M F

Exceptionality(ies) _____

LEA (Local Education Agency): _____

School Building Student Attends: _____

Parent(s) Residing with Student

Last Name: _____

First Name: _____

Relationship:

Mother Father Guardian Grandparent

Home Phone: _____

Cell Phone: _____

Work Phone: _____

Fax: _____

Email: _____

Last Name: _____

First Name: _____

Relationship:

Mother Father Guardian Grandparent

Home Phone: _____

Cell Phone: _____

Work Phone: _____

Fax: _____

Email: _____

Address: _____

Parent Attorney: _____

Attorney Phone: _____

Attorney Email: _____

Address: _____

Attorney Fax: _____

Parent Not Residing with Student

Last Name: _____

First Name: _____

Relationship:

Mother Father Guardian Grandparent

Home Phone: _____

Cell Phone: _____

Work Phone: _____

Fax: _____

Email: _____

Address: _____

Parent Attorney: _____

Attorney Phone: _____

Attorney Email: _____

Address: _____

Attorney Fax: _____

Local Education Agency (LEA) Information

I. LEA Contact

Last Name: _____ First Name: _____ Position Title: _____

Cell Phone: _____ Work Phone: _____ Fax: _____ Email: _____

Address: _____

II. Superintendent/CEO

Last Name: _____ First Name: _____ Position Title: _____

Address: _____ Phone: _____

III. LEA Attorney

Address: _____

Attorney Phone: _____

Attorney Email: _____

Attorney Fax: _____

IV. The Due Process Hearing will be held at the following address:
(Building Name, address and Room Number/Name – to be completed by the LEA)

Information About the Due Process Complaint Notice

- A. Does your issue pertain to a Hearing Officer Decision which has not been implemented? Yes No
(If yes, the Bureau of Special Education will be notified, and will investigate the matter. Due Process is not available when the issue pertains to non-implementation of a Hearing Officer Decision.)
- B. Is this a request for an expedited hearing? Yes No
If yes, please check one of the reasons below:
 Disciplinary (drugs/weapons) ESY (Extended School Year)
Check here is Student is in the ESY Target Group
- C. The law states that a party may not have a due process hearing until a Due Process Complaint Notice is filed, which meets all of the legal requirements. An opposing party may challenge the sufficiency of the Due Process Complaint Notice if it is lacking sufficient information. You must describe the nature of the problem giving rise to this request for due process, including as many facts to support your position as possible. You must also provide a proposed resolution of the problem to the extent known and available to you. You may attach a separate sheet of paper if you need more space:

Nature of the problem:

Nature of the problem: *(continued)*

Proposed Resolution:

If you know the opposing side's position on this matter, you may provide it here, although it is not required by law:

- D. Prior to a due process hearing taking place, the law requires the parties to participate in a Resolution Session, unless both sides agree in writing to waive this requirement. Please complete the following information:
1. A Resolution Meeting to discuss these issues is scheduled for: _____ (Date)
 2. A Resolution Meeting was held on: _____ (Date)
 3. Participation in the Resolution Meeting was waived by both parents and the LEA in writing on: _____ (Date)
 4. In lieu of a Resolution Meeting, I am requesting mediation*.

* If #4 is checked, the ODR Mediation Case Manager will be in contact with the parties.

Please mail or fax this form **to the opposing side** and to the Office for Dispute Resolution:

Office for Dispute Resolution

Suite 600
6340 Flank Drive
Harrisburg, PA 17112-2764

Phones:

717-541-4960 x 3900
800-222-3353 (PA only)
800-992-4334
800-654-5984 (TTY)
717-657-5983 (Fax)

You will be contacted by a Case Manager from ODR upon receipt of this Due Process Complaint Notice.

Additional information about due process is available by accessing the website at ***odr.pattan.net*** and the ***Special Education Dispute Resolution Manual***.

Parents may also contact the ***Special Education ConsultLine***, a Parent Help Line, for information on procedural safeguards and due process: 800-879-2301.

TOOL 10

BURDEN OF PROOF IN DUE PROCESS HEARINGS

An important issue to consider before filing for a due process hearing is the burden of proof. Until recently, the school district bore the burden of proof in special education due process hearings in the Third Circuit. In November of 2005, the United States Supreme Court held in Schaffer v. Weast, 546 U.S. ---, 126 S.Ct 528 (2005) that the party seeking an special education due process hearing to resolve an issue relating to a child's program must bear the burden of proof. The Weast decision has been applied (and in some ways expanded) in cases in the Third Circuit to place the burden of proof on parents who request hearings to resolve LRE issues and in cases on appeal that were decided at the hearing under the old rule before Weast was handed down.

Although we are yet to see the full impact of Weast and its progeny, this is a significant change for parents and their attorneys. In most cases, the parent is the party that seeks a due process hearing, even in situations where the school district is the party seeking a change to the child's program or placement. You may be able to argue even under Weast that the party who seeks to change the *status quo* for a child is the party who should bear the burden of proof.

The reality is that parents will bear the burden of proof in a lot more cases now, so it is more important than ever to consider whether or not you need an expert to testify at the hearing. The school will undoubtedly have experts that it can present at the hearing – the child's teachers, school psychologists, special education directors, school administrators. In most cases, it will be helpful if not essential to have an expert testify on behalf of the parent at the hearing.

Parents may also be required to present their case first at the hearing. The Special Education Dispute Resolution Manual was amended to include a rule that the party with the burden of proof proceeds first at the hearing. This new rule does give the hearing officer discretion to make exceptions, however; the rule specifically states that in cases where a school is trying to change the placement of a child, the hearing officer may decide that the district should proceed first. You can obtain this update to the rule at http://odr.pattan.net/files/odr/sedr_man_updates.pdf.

TOOL 11

NEW RULES FOR RECOVERING ATTORNEY AND EXPERT FEES IN SPECIAL EDUCATION CASES

Attorneys' Fees:

IDEA 2004 continues to allow parents who *prevail* at due process hearings and in court to ask a judge to award them *reasonable* attorneys' fees as part of their costs in pursuing their special education claim(s). 20 U.S.C. § 1415(i)(3)(B)(i)(I); 34 C.F.R. § 300.517(a)(1)(i).

In order to "prevail", a hearing officer or judge must find in favor of the parent on a significant issue in the case, or the parent must obtain a court-ordered consent decree or a *stipulated settlement* that: (1) contains mandatory language, (2) is entitled "Order", (3) bears the signature of the judge, not the parties' counsel, and (4) provides for judicial enforcement. *John T. v. Delaware County IU*, 318 F.3d 545 (3rd Cir. 2003).

The "reasonableness" of attorneys' fees is based on a comparison of what other attorneys in the community in which the case arose are charging for the kind and quality of services provided, and no bonus or multiplier may be used in calculating the fees. 20 U.S.C. § 1415(i)(3)(C); 34 C.F.R. § 300.517(c)(1).

By the same token, IDEA 2004 now allows a State educational agency (Pennsylvania Department of Education) or a local education agency (school district or charter school) that prevails at a due process hearing or in court to recover its reasonable attorneys' fees against a *parent* or the *parent's attorney* in a few *extreme* cases. Specifically, the law allows the agency to recover its attorneys' fees only when:

1. The parent files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation (20 U.S.C. § 1415(i)(3)(B)(i)(II); 34 C.F.R. § 300.517(a)(1)(ii));
2. The attorney of a parent continues to litigate after the litigation clearly becomes frivolous, unreasonable, or without foundation (20 U.S.C. § 1415(i)(3)(B)(i)(II); 34 C.F.R. § 300.517(a)(1)(ii)); or
3. The parent's complaint 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 (20 U.S.C. § 1415(i)(3)(B)(i)(III); 34 C.F.R. § 300.517(a)(1)(iii)).

Even though education agencies, parents, and parents' attorneys may be liable for attorneys' fees in certain situations, there are limitations and/or prohibitions on recovering attorneys' fees that may apply in other situations. For example:

- A parent who rejects a written settlement agreement that is offered more than 10 days before an administrative or court hearing may not be able to recover any attorneys' fees incurred after the offer if the ultimate relief granted by a hearing officer or judge is not more favorable than the settlement offer. 20 U.S.C. § 1415(i)(3)(D)(i)(I)-(III); 34 C.F.R. § 300.517(c)(2)(i)(A)-(C). However, fees may be awarded if the parent was substantially justified in rejecting the settlement offer. 20 U.S.C. § 1415(i)(3)(E); 34 C.F.R. § 300.517(c)(3).
- Attorney's fees may not be awarded to any party when they relate to any meeting of the IEP Team, unless the meeting is convened as the result of a due process hearing or court action. 20 U.S.C. § 1415(i)(3)(D)(ii); 34 C.F.R. § 300.517(c)(2)(ii).
- Neither parents nor agencies can seek reimbursement for attorneys' fees when their attorney attends a Resolution Session prior to a due process hearing. 20 U.S.C. § 1415(i)(3)(D)(iii); 34 C.F.R. § 300.517(c)(2)(iii).
- A judge will reduce the amount of attorneys' fees awarded to a parent when:
 - The parent or parent's attorney unreasonably protracted the final resolution of the controversy (20 U.S.C. § 1415(i)(3)(F)(i); 34 C.F.R. § 300.517(c)(4)(i));
 - The amount of attorneys' fees unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience; (20 U.S.C. § 1415(i)(3)(F)(ii); 34 C.F.R. § 300.517(c)(4)(ii));
 - The time spent and legal services furnished were excessive considering the nature of the action or proceeding (20 U.S.C. § 1415(i)(3)(F)(iii); 34 C.F.R. § 300.517(c)(4)(iii)); or
 - The parent's attorney did not provide the appropriate information in the due process complaint notice given to the local education agency as required by law (20 U.S.C. § 1415(i)(3)(F)(iv); 34 C.F.R. § 300.517(c)(4)(iv)).

However, a judge will not reduce the amount of attorneys' fees awarded to a parent if the court finds that the State or local education agency unreasonably protracted the final resolution of the case or committed another violation as described above. 20 U.S.C. § 1415(i)(3)(G); 34 C.F.R. § 300.517(c)(5).

Expert Fees:

The Supreme Court of the United States recently ruled that parents who prevail in IDEA actions can **NOT** recover their expert fees from state or local education agencies. *Arlington Central School Dist. Bd. of Ed. v. Murphy*, 126 S.Ct. 2455 (June 26, 2006). This decision overrules longstanding precedent applicable in Pennsylvania and other states that held to the contrary.

Practical Advice and Tips:

- Don't let fear of getting sued by your school district for attorneys' fees intimidate you or stop you from exercising your right to a due process hearing when necessary. As long as you have a legitimate complaint about your child's evaluation, IEP, and/or placement in the least restrictive environment and are not requesting a hearing just to drag out resolution of the issue(s), it is highly unlikely that a judge would ever hold you accountable for paying your district's attorneys' fees.
- Think about requesting an Independent Educational Evaluation (IEE) at public expense before going to a due process hearing. This may resolve a disagreement without the need to go to a hearing, or at least provide an expert opinion that you can present to a hearing officer without having to pay for the evaluation yourself.
- If you hire an expert for litigation, make sure he/she observes your child in school if possible and puts all findings/conclusions in a comprehensive written report. Experts are more credible to hearing officers when they have seen the child in the school environment. And, if a document is detailed enough to speak for itself, you may be able to reduce the amount of time you have to pay the expert to testify about the document at the hearing or avoid the need to have the expert testify in person at all.
- Although you cannot seek reimbursement for attorneys' fees if your attorney attends a Resolution Session, it may be worth the expense if you believe the case will not resolve and will proceed to a due process hearing. Many parent attorneys use the Resolution Session as a "discovery" opportunity and learn important facts that they then use to support and advance the parent's case.
- Attorneys are prohibited from attending Mediation Sessions in Pennsylvania, so attorneys' fees recovery is a non-issue. The prohibition of attorney participation is intended to create a less confrontational environment and encourage the parties to work together to find a mutually agreeable solution to the issue(s). This may be a great option for parents and districts who have a little "wiggle room" to compromise about how to resolve the dispute.

TOOL 12

PROPOSED CHAPTER 14 CHANGES IN LIGHT OF THE IDEA 2006 REGULATIONS

1. Permit enforcement of mediation and dispute resolution agreements through DOC: PA has the authority to permit DOC to enforce mediation and resolution session agreements – the regulations should make clear that DOC has this authority. Otherwise parents can enforce these agreements only in state or federal court, which is not feasible for most families.
2. Align the statutes of limitation for filing a complaint with DOC and for filing a hearing complaint: PA can set a 2 year statute of limitation for filing a complaint with DOC (to parallel the hearing system), but otherwise the statute of limitations is only one year; the PA regulations should align these statutes at 2 years. Parents can file a request for a hearing for a violation that took place more than 2 years ago if the school district withheld information or deliberately misrepresented that it had resolved the problem. These exceptions should also apply to the DOC process.
3. Guarantee that families can request mediation without waiving pendency: When a parent rejects a school district's proposal for a change in, *e.g.*, a child's program, and seeks to resolve that dispute through the procedural safeguard system, that child's program is "pendent" and cannot be changed over the parent's objection until the hearing and appeal process has been completed. The regulations should make clear that a parent who requests mediation is entitled to pendency, or parents will be forced to by-pass mediation and request a hearing in order to ensure that this protection is not waived.
4. Provide families timely and free copies of their child's education records: Federal law guarantees families "access" to school record, but not free copies. Chapter 14 should ensure families free copies before such crucial events as the IEP meeting, the mediation or resolution session, or a hearing.
5. Guarantee families and their experts reasonable access to the child's classroom and any proposed classroom setting: Clearly classroom visits can be regulated by a school district to prevent classroom or school disruption. But parents and their experts must be ensured reasonable access to the current and any proposed classroom. Otherwise it is difficult for families to be informed participants in the IEP process or for them to use the procedural safeguard system successfully.
6. Incorporate the pre-*Weast* standard in PA regulation: In *Schaffer v. Weast*, the Supreme Court specifically refrained from deciding whether a state has the authority to place the burden of persuasion on school districts. According to the latest information from the National Disabilities Rights Network, at least 5 states place the burden on school districts, some by state statute and others through regulation. We

urge that PA adopt such a rule in Chapter 14, returning PA to the rule that worked effectively and fairly for many years.

7. Guarantee a parent the right to bring an advocate to a resolution session: Unless waived in writing by the parties, before a hearing can be scheduled the family must attend either mediation or a resolution session. Bringing an advocate to a resolution session can help the parties reach agreement and can ensure that the agreement reached is beneficial to the child and family. Although the comments to the IDEA regulation state that a parent can bring an advocate, we think that clear state regulation is required.

Getting Involved:

The State Board of Education will conduct an invitational roundtable meeting and a series of regional public roundtable meetings to seek comments and recommendations regarding Chapter 14 (Special Education Programs and Services) and Chapter 16 (Special Education for Gifted Students) regulations. In addition, the Department of Education will also use a portion of the public roundtable meeting agenda to discuss Chapter 711 regulations (Charter School Programs and Services for Students with Disabilities).

The dates, times, locations and registration information are outlined below. This information, together with information regarding the purpose and function of roundtable meetings, can be accessed at:

http://www.pde.state.pa.us/stateboard_ed/cwp/view.asp?A=3&Q=106648&pp=12&n=1

This is a great opportunity to be directly involved with the Chapter 14 reauthorization process. If you are unable to register for a roundtable meeting don't despair – there will be other opportunities and more work to be done after the State Board of Education issues draft regulations early in 2007.

December 6, 2006

Invitational Stakeholder Meeting

1:00 p.m. – 4:00 p.m.

PaTTAN Harrisburg

6340 Flank Drive Suite 600

Harrisburg, PA 17112

The State Board invites selected participants to this meeting. Others may attend as observers. Registration to attend the meeting as an observer begins on November 17 at 10:00 a.m. Registrations are only accepted by telephone on a first-come, first-served basis. Call (717) 787-3787. Observer space is limited. In light of space limitations and the Board's interest to accommodate representatives from as many organizations/interests as possible, the Board requests that organizations without a participant at the roundtable limit the number of observers to two. Organizations with a participant in the roundtable are requested to limit observers to one.

December 11, 2006

Public Roundtable Meeting

**PaTTAN Pittsburgh
3190 William Pitt Way
Pittsburgh, PA 15238**

9:00 a.m. – 12:00 noon Chapter 14
1:30 p.m. – 3:00 p.m. Chapter 16
3:00 p.m. – 4:00 p.m. Chapter 711 (Department of Education)

Registration to attend the meeting as a participant begins **November 20** at 10:00 a.m. Call (717) 787-3787. Registrations are only accepted by telephone on a first-come, first-served basis. Space is limited. In light of space limitations and the Board wanting to accommodate representatives of as many organizations/interests as possible, the Board requests that organizations without a participant in the roundtable limit the number of observers to two. Organizations represented by a participant in the roundtable discussion are requested to limit observers to one.

December 13, 2006

Public Roundtable Meeting

**PaTTAN - Harrisburg
6340 Flank Drive
Suite 600
Harrisburg, PA 17112**

9:00 a.m. – 12:00 noon Chapter 14
1:30 p.m. – 3:00 p.m. Chapter 16
3:00 p.m. – 4:00 p.m. Chapter 711 (Department of Education)

Registration to attend the meeting as a participant begins **November 21** at 10:00 a.m. Call (717) 787-3787. Registrations are only accepted by telephone on a first-come, first-served basis. Space is limited. In light of space limitations and the Board wanting to accommodate representatives of as many organizations/interests as possible, the Board requests that organizations without a participant in the roundtable limit the number of observers to two. Organizations represented by a participant in the roundtable discussion are requested to limit observers to one.

December 19, 2006
Public Roundtable Meeting
PaTTAN King of Prussia
200 Anderson Road
King of Prussia, PA 19406

9:00 a.m. – 12:00 noon Chapter 14

1:30 p.m. – 3:00 p.m. Chapter 16

3:00 p.m. – 4:00 p.m. Chapter 711 (Department of Education)

Registration to attend the meeting as a participant begins **November 22** at 10:00 a.m. Call (717) 787-3787. Registrations are only accepted by telephone on a first-come, first-served basis. Space is limited. In light of space limitations and the Board wanting to accommodate representatives of as many organizations/interests as possible, the Board requests that organizations without a participant in the roundtable limit the number of observers to two. Organizations represented by a participant in the roundtable discussion are requested to limit observers to one.

Directions to roundtable meeting locations may be obtained at:

www.pattan.k12.pa.us/contact/Offices.aspx

Copies of Chapters 14, 16 & 711 may be accessed at:

www.pacode.com/secure/data/022/022toc.html

TOOL 13

LINKS TO HELPFUL RESOURCES

The Office for Dispute Resolution (ODR) publishes a Special Education Dispute Resolution Manual (formerly known as the Hearing Officer's Handbook) which may be found on its website at <http://odr.pattan.net/files/odr/hoh.pdf> and the recent updates to the manual are at http://odr.pattan.net/files/odr/sedr_man_updates.pdf.

ODR has a Due Process Fact Sheet which may be found at <http://odr.pattan.net/dueprocess/DueProcessFactSheet.aspx>.

ODR's guide to Mediation may be found at <http://odr.pattan.net/files/odr/medguide.pdf>.

ODR operates a Consultline for parents and advocates to speak with a special education specialist about specific questions you have about the special education system. You can call 1-800-879-2301 or find more information on the website at <http://odr.pattan.net/consultline/default.aspx>.

Education Law Center's website contains many publications on special education designed for parents and advocates, www.elc-pa.org.

The Office of Special Education Programs (OSEP) in the U.S. Department of Education has an IDEA 2004 website with continuously updated information and research tools on the statute and new regulations. The website includes information on procedural safeguards and dispute resolution and may be found at <http://idea.ed.gov/explore/view>.