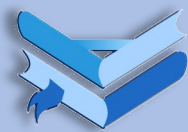


What To Do If You Disagree With A School District, and When Might You Need an Attorney?

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What are you entitled to- an overview

- Federal and State law mandate that students with special education needs must receive a free and appropriate public education (FAPE) under the Individuals with Disabilities Education Act (**IDEA**).
- If a child is eligible for special education and services under the IDEA, the student is entitled to an individualized education program (**IEP**)
- The legal standard is the IEP must be “reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances,” which is ‘markedly more demanding than the ‘merely more than *de minimis*.’” – **INDIVIDUALIZED!**
- The IEP has several sections including: classification; present levels of performance; goals; related services; accommodations; class size; transition plan; and placement
 - Evaluations must be conducted at least every three years unless the Parent waives the evaluations.
 - The IEP must be reviewed and updated at least annually
- Parents have the right to be meaningful participants in IEP meetings- *get documents before the meeting... but the district does not need to AGREE with parents, just consider what they want*
- The child has the right to remain in school through age 21
- **2 year statute of limitations, with some exceptions to bring claims against a school district – if issue speak with someone!**

What are some claims that might be in a due process complaint? (not exhaustive)

■ Procedural versus SUBSTANTIVE due process violations

- “Impeded the student's right to a [FAPE]” OR
- “significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a free appropriate public education to the parent's child” OR
- “caused a deprivation of educational benefits”

■ Present levels of performance

- Goals
- Transition plan
- Classification
- Class size
- Accommodations
- Related services – type / amount / frequency/group size

■ Inappropriate evaluations / failure to conduct triennial re-evaluations

- No progress / regression
- Not address speech, behavior, sensory, ADL, social skill issues
- Child find
- No ESY
- Untimely evaluations / placement
- CSE members
- Notice of meeting/ Final notice of recommendation
- Fail to allow parent meaningful participation / fail to address parent concerns
- Fail to provide parent translation/interpretation rights

What are NOT issues for a due process complaint?

- Building level issues
 - Not like the evaluator chosen*
 - Not agree with grading or discipline policy*
- Issues with staff ...
- Not liking a teacher
- Personal issues with teachers / evaluators / providers/ bus drivers IE attitudes
- Scheduling issues*
- Not agreeing with a district decision SOMETIMES, depends on the decision

** not everything is an issue for a HEARING REQUEST, or rises to the level of an actionable claim against a district – it must violate the students IDEA rights and parents are not entitled to get everything they want

When can you file, and what can be in the IHR?

- 2 year SOL for claims
 - What does this look like in practice and what does that mean?
- What about background information beyond those two years that you think is important?
- What about issues from a prior hearing request?
- What if you filed and won a hearing request last year and file this year- can you do that? What can you put in that request?
- What if you don't like what your school is doing and do not want to give them any more time or an opportunity? ...

If you disagree with your district, what can you do (and what can you do to prepare in case you need an attorney or advocate later on?)

- Keep records
 - Review documents as soon as you get them!
- Attend meetings
 - Ask for additional meetings as necessary
 - Ask for data
 - Ask for evaluations / goals/ information in writing ...
- Writing samples/ videos (generalization issue OR independence?)
- Confirm in writing
- Document issues- let district know AND keep records for yourself
- Provide your documents to the district – no gotch'ya moments

What if you don't agree with the District's program, evaluations, or lack thereof?

Options

- You can ask for more meetings and /or new evaluations (everything depends on the situation....)
 - Go in again and discuss issues
 - Letter to Superintendent
 - Go in with attorney or advocate IE for those building level issues
 - Have someone in background helping you prepare
- *State complaint
- *Mediation – with a trained mediator, voluntary, no guaranteed outcome because parties agree to outcome
- Advocacy
- Evaluations – IEE request
- Due process complaint

Advocacy

- Not as contentious, but can be seen as a ramp up
- Working together with the district to get everyone on the same page
- Can be in background or go to meetings
- Can review documents and provide guidance and suggestions / strategize
- Working with the family to get the district to create a more appropriate IEP for the student, including if necessary, another placement and identifying appropriate placements
- Can lead to / does not remove ability to file a due process complaint if necessary

IEEs – Independent Educational Evaluations

- Parent's right to disagree with district evaluations and obtain an independent evaluation at district expense
 - Can be technical and procedural (at this point recommend speaking with an attorney)
 - What's an evaluation?
 - What can you disagree with?
 - Lack of evaluation? Not comprehensive?
 - Is the evaluator independent?
 - Speak with them, ask if District can revise, ask how make recommendations
 - Are you paying a difference?
 - You might still need to go to hearing....
 - If the district does nothing
 - If the district files to defend their evaluations

Due Process Complaint

- Lawyer's may assist with:
 - Review of student records – viable claims, other steps at this time they recommend
 - Initiate due process hearing
 - Filing a due process complaint and discussing relief options
 - Resolution session and attempts to settle
 - Representation at due process hearing
 - Not a quick fix
 - Possible appeals- to State Review Officer and Federal Court if necessary

See:

- 2015 National Association of Administrative Law Judiciary Article, 85% district winning percentage if a parent is not represented by council:

<https://perryzirkel.files.wordpress.com/2015/04/zirkel-pro-se-outcomes-analysis.pdf>

-2015 University of Pennsylvania Law Review article (Wisconsin, Minnesota and Illinois, <15-16.8% of pro se parents won at hearings, and “[a]ttorney representation was critical to success.”):

https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=9488&context=penn_law_review

Types of Relief

- Stay-put provision – **if** parent initiates a due process hearing
- Compensatory services
 - tutoring
 - related services
- Independent educational evaluations (IEE) at district expense
- Appropriate IEP
- Appropriate placement
 - Tuition reimbursement cases are different – more complex

QUESTIONS TO ASK YOUR LAWYER

- Cost
- Billing practices
- Do you have conflicts (have you represented school districts/BOE etc.?)
- How many hearings have you handled?

For families to keep in mind- they will need to follow the strategy advice of the attorney / firm, though the decision to settle is theirs (though they should go over any settlement with their attorneys, for multiple reasons, including that if they are using a fee shifting agreement, and settle without fees included, that family will be liable for attorney's fees...)

Due Process Complaints – Legal Representation is Available and Affordable Under Fee Shifting!

- IDEA “fee-shifting” provision

20 USC 1415(h)(3)(B)

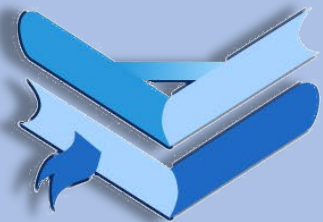
Award of attorneys’ fees (i) In general

In any action or proceeding brought under this section, the court, in its discretion, may award reasonable attorneys’ fees as part of the costs—

(I) to a prevailing party who is the parent of a child with a disability;

Keep a file of the child's records!

- IEPs
- Correspondence to and from school (including emails)
- Evaluations and assessments
- Report cards and progress reports
- Discipline, behavior, incident reports, suspension records
- Samples of school-work and homework
- CSE meeting notices



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