

## **Appealing a School Decision**

There are times when a family and school staff do not agree on the services or accommodations a student with a disability needs at school. Federal law provides parents the right to appeal a decision by the school in both special education (IDEA) and Section 504 accommodations for eligible students with disabilities. Also, state laws and regulations may provide additional rights or procedures.

Every school is required to provide a description of the appeal process upon request. If you are considering this option, the first step is to request a copy. For more information on IDEA and Section 504, be sure to obtain a copy of *Educational Rights for Children with AD/HD—WWK4* from CHADD's National Resource Center on AD/HD at [www.help4adhd.org](http://www.help4adhd.org).

The special education and Section 504 programs in your school district may have different procedures, so be certain that you are pursuing your rights through the correct department of the school system.

## **Individuals with Disabilities Education Improvement Act of 2004 (IDEA)**

IDEA contains procedural safeguards that apply to the identification, evaluation, or educational placement of students who may be in need of special education and related services so they are able to receive a free and appropriate public education (FAPE). IDEA and its implementing regulations allow for a variety of mechanisms to resolve disputes, including requesting mediation, filing a complaint with the state education agency, or requesting a due process hearing.

### **Before Filing an Appeal**

Consider these options first:

1. **Informal Meeting**—If school staff members are not aware of the depth of your concerns, consider asking for an informal meeting with all the staff involved in your child's education to express your concerns. Be clear about the resolution you are seeking. Listen to the concerns of the school staff and identify what areas of agreement you have.
2. **Independent Educational Evaluation**—If your concern is about the evaluation your student has received through the school system, you may ask for an Independent Educational Evaluation. This is an evaluation done by a qualified professional outside the school system. Make this request in writing to the school. The school district may then approve the request and pay for the evaluation or they may file for

a due process hearing (see appeals below). A parent may also pay for an independent evaluation and bring the results to the school to be considered as part of the IEP.

3. **Facilitated IEP Meeting**—Some states will provide a neutral trained professional to be the facilitator in an IEP meeting to help the parents and the school reach resolution. If your state provides this service (see the information provided by the school district), then make your request in writing to have a facilitator at the meeting.
4. **Mediation**—Either the school or the family may request a mediator to help resolve the conflict between the school and the family. Both parties must agree to this process for it to happen. If you would like to go to mediation, write a letter to the school requesting a mediator be provided to resolve the conflict.
5. **File a complaint with the State Department of Education**—If you think there has been a violation of state or federal special education law, you can file a complaint with the state office of education within one year of the possible violation. The complaint must be in writing, give the facts of the alleged violations, and be signed. The state will then respond within 60 days with a decision.

### **Requesting a Due Process Hearing (An Appeal)**

The formal request for a due process hearing to appeal the decision of the school district typically must be filed within two years of when the parent or school district knew or should have known of the alleged violation of IDEA.

The request for a due process hearing must be provided in writing to the other party, and filed with the state or local education agency responsible for providing the due process hearing. The written request for a hearing must include:

- the name and address or other contact information for the student;
- the name of the school the student is attending;
- a description of the incident or activity and relevant facts that led to the request; for a due process hearing; and
- a proposed resolution of the issue (to the extent possible).

A hearing will not be scheduled until proper notice is delivered to the other party and filed with the state or local education agency. States are required to disseminate a model form for how to develop the notice requesting a hearing. The content of the notice is considered to be sufficient unless the receiving party requests additional information within 15 days of

receiving the notice.

Since 2004, prior to a due process hearing, if mediation is not used, the parents and school district are required to attend a mandatory resolution session. The resolution session is scheduled by the local school district after a request for a due process hearing is filed. If the parent refuses to attend mediation, the resolution session must be scheduled within 15 days of receiving the request for a due process hearing. If the parties decide to schedule a resolution session, the session must be completed within 30 days after the school district receives the request for a due process hearing. If the parent and school district are able to reach an agreement about how to resolve the dispute, then a written settlement agreement will be drafted for both parties to sign. Both parties have the right to revoke the agreement within three days of the end of the resolution session. If no agreement is reached, then the due process hearing will be scheduled.

Although the resolution session is mandatory, the parents and school district may agree in writing to waive the session, or opt to use mediation to attempt to resolve the dispute. If the parents refuse to participate in the resolution session, the request for a due process hearing can be dismissed. It is important that prior to deciding whether to seek mediation or a resolution session, that parents seek advice from local qualified special education attorneys and advocates who are able to provide guidance on which dispute resolution mechanism is most appropriate given their particular circumstances.

If parents are still unable to resolve their dispute through informal meetings, mediation, resolution session, or other mechanisms, then parents have the option of proceeding with their request for a due process hearing. The due process hearing will be conducted by an independent hearing officer or panel of impartial hearing officers. Depending on the state, the decision of the due process hearing may either be appealed directly to the local federal district court, or the decision may first need to be reviewed by an appeals panel of the state education agency. In either scenario, the U.S. District Court reviews the case, can decide whether to request additional evidence, and then will issue a decision based on the Court's findings of facts.

The regulations implementing IDEA have timelines in place for when decisions must be issued after a due process hearing. Within 45 days of the education agency receiving the request for a hearing, the independent hearing officer must reach a decision, and mail a copy of the decision to the parents and school district. Also, within 30 days of receiving a request for the state appeals panel to review the decision, a final decision must be reached and a copy of the decision mailed to the parent and school district. Also, the regulations allow for either the parents or the school district to submit a request to the hearing officer for extension of the timelines. Typically, after a hearing officer issues a decision, IDEA requires that an appeal be filed within 90 days in either a state or federal court.

## **Section 504 of the Rehabilitation Act of 1973 (Section 504)**

Due process hearings can also be requested when a student is denied accommodations under Section 504 of the Rehabilitation Act of 1973. The Office of Civil Rights (OCR) of the U.S. Department of Education (ED) is responsible for enforcing Section 504 in programs and activities that receive federal financial assistance from ED. According to OCR's website, typically OCR requires that any appeal be made through a due process hearing, although OCR will investigate complaints received regarding systematic violations of Section 504.

### **Concluding Remarks: State Law May Impact the Appeal**

Before attempting to appeal a school district decision, consult the websites of the state and local education agencies for guidance on state laws and regulations that may impact the filing of an appeal in that particular state. For example, state law determines whether a non-lawyer can represent either party in a due process hearing, and where an appeal must be filed. Also, state laws may have more restrictive timelines or requirements for filing a notice requesting a due process hearing. It is important to remember that due process hearings are a formal and potentially time-consuming and expensive means to attempt to resolve a dispute.

### **Resources for Finding an Advocate or Attorney**

**Council of Parent Advocates and Attorneys (COPAA):** COPAA's mission is to be a national voice for special education rights and to promote excellence in advocacy. COPAA's primary goal is to secure high quality educational services for children with disabilities. COPAA's website has guidelines for selecting an attorney or advocate, and a searchable database of attorneys or advocates. Visit <http://www.copaa.net>.

**National Disability Rights Network: Protection and Advocacy Network (NDRN):** NDRN is the nonprofit membership organization for the federally mandated Protection and Advocacy (P&A) Systems and Client Assistance Programs (CAP) for individuals with disabilities. Collectively, the P&A/CAP network is the largest provider of legally based advocacy services to people with disabilities in the United States. Visit NDRN at <http://ndrn.org/aboutus/pwd.htm>.

**National Alliance Technical Assistance Center and Parent Centers:** Parent Training and Information Centers and Community Parent Resource Centers provide training and assistance to the families of the nation's seven million children with disabilities. They are

funded through the U.S. Department of Education under the Individuals with Disabilities Education Act (IDEA). See <http://www.taalliance.org/ptidirectory>.

**Commission on Mental and Physical Disability Law of the American Bar Association (ABA CMPDL)** – The mission of the ABA CMPDL mission is "to promote the ABA's commitment to justice and the rule of law for persons with mental, physical, and sensory disabilities and to promote their full and equal participation in the legal profession." The website offers a searchable database of attorney's familiar with disability issues; see <http://www.abanet.org/disability/disabilitydirectory/home.shtml>.

**CHADD's Public Policy Staff**

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