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RESOLVING PROBLEMS IN SPECIAL EDUCATION

I. Handling Special Education Problems with Your School District

A. Procedural errors

- not conducting Child Find
- not (formally) assessing a child in all areas of suspected disability
- not holding IEP meetings annually
- not creating appropriate goals for areas of need
- not identifying the amount and duration of placement and services
- not including the required individuals in an IEP meeting
- not allowing a parent "meaningful participation" in the IEP process
- not conducting triennial assessments and IEP meetings
- not providing a parent with Notice of Procedural Safeguards

B. Substantive errors

- failing to implement the IEP program
- failing to provide FAPE - services which allow a student to make (meaningful) educational progress

C. Other problems

- bullying
- untrained or abusive staff
- ???

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II. How to Resolve Problems Informally

- A. Document problems - to prove that district/individual got the communication
- B. Meet with teacher, special education director, principal, etc.

Document any informal meeting with a "Thank you" letter

- C. Meet with school district administrators to attempt to resolve the problem -

Document any meeting with a "Thank you" letter

IF THE PROBLEM IS NOT RESOLVED AT THIS POINT, YOU MUST TAKE MORE FORMAL ACTION.

III. State Complaint Procedures - Complaint Review Process or "CRP" 34 C.F.R. § 300.151 et seq. C.E.C. § 56500.2

A. State Compliance Complaint & Investigation

- 1. Time for Filing Complaint - must be within a year of the alleged violation (34 C.F.R. § 300.153c))

Time for completion- state must complete investigation within sixty (60) calendar days (34 C.F.R. § 300.152)

2. Process -

Parent files complaint (no specific form is required) with the State Department of Education and to the local educational agency (school district) 34 C.F.R. § 300.153(d)

Complaint should

- Identify a violation of IDEA
- Give the facts of the violation
- Include a signature and a way for an investigator to contact the signer
- Provide the name and address of the student
- Provide a description of the problem of the child
- Provide a proposed resolution/solution
- Identify the law, if possible, that applies

3. Cost - no costs, other than copying of materials to send to State (always keep a copy of what you send)

4. Likelihood of Success -

B. Due Process Complaint/Administrative Hearing

1. Time for filing complaint - Two years
C.E.C. § 56505(1)

Time for completion of due process hearing - the State is supposed to issue a decision in a due process case forty five (45) days after the filing of the due process complaint, plus thirty (30) days C.E.C. § 56501.5

2. Procedure -

Filing the Complaint

- Parent or school district files a "complaint" (form is available on OAH website but requires more information.
- Filing party files complaint with OAH and "serves" a copy of the complaint on the school district Superintendent.
- Within ten days, the other party is supposed to file an "answer" to the complaint.

Resolution Session and Mediation

- If a parent has filed the complaint, the district must offer a "Resolution Session" to try to resolve the problem. This meeting can be waived by the parent and district.

- A mediation is scheduled, but parties are not required to attend. If they do attend, a mediator is assigned to help resolve the problems.

- Dates are set for hearing.
Currently, OAH is changing how it sets hearing dates. As of 10/08, OAH picks a one-day hearing date, without consulting with parents or school districts. The parties can ask ("move") for different dates for hearing.

- Five business days before the hearing, the parties must provide copies to the other party of all documents, and a list of all witnesses to be presented at the due process hearing

The failure to provide copies of documents or to identify witnesses may mean that the document or witness can't be used at hearing.
C.E.C. § 56505.1(f)

3. Cost -

There is no cost for the filing of a due process complaint.

Parties must make several (at least four) copies of evidence books and must sometimes pay for a witness to testify at hearing.

If a parent or district hires an advocate or attorney, the cost can increase significantly. There are some advocates/attorneys who will take a case for no or little cost to the parent.

If a parent/student prevails (wins) in a due process case, the parent may be reimbursed some or all of his/her attorney's fees and costs.

4. Likelihood of Success - current success rates for parents are low, higher success rates are found in the State and federal courts on appeal.