

BACK STORY

SPECIAL EDUCATION Alternative Dispute Resolution Options

BY PHOEBE V. REDMOND, ESQ.

Special education disputes can be heartrending, humiliating and highly technical. Yet, most special education concerns raised by parents are promptly, creatively and amicably resolved in collaboration with their local schools.

However, when concerns cannot be resolved at the local school level, federal and state law provide several alternative options from which parents may select to resolve disagreements, thereby avoiding the time and expense of litigation. The Individuals with Disabilities Education Act (the IDEA) is the federal law that provides parameters for educational programming for students with disabilities. At the core of this legislation is a comprehensive set of procedures designed to ensure that students with disabilities receive a Free Appropriate Public Education (FAPE) and their parents are accorded due process. The IDEA requires state and local agencies to offer three dispute resolution options:

- Submission of a complaint to the state educational agency;
- Voluntary mediation; and
- A request for an administrative hearing, which mandates a 30-day resolution period.

When necessary, utilizing these special education alternative dispute resolution options to address special education disputes enables parents and schools to work as partners in the best interests of students with disabilities. Below are brief overviews of these alternative dispute resolution options required under the IDEA.

Further guidance and sample forms are provided on the Nevada Department of Education (NDE) website at http://www.doe.nv.gov/Special_Education/Dispute_Resolution/.

State Complaint

The state complaint process provides for the submission of a complaint directly to the NDE. A state complaint is confidential, must be in writing, must be signed and has to be submitted within one year from the date the alleged violation of the IDEA occurred. Decisions are issued within 60 days, subject to certain exceptions such as an extension of time for the state to complete its investigation. Once a state complaint is filed, the parents and school districts are given the opportunity to resolve their dispute before a decision is issued.

In addition to the IDEA state complaint process, the NDE implements a Constituent Concern Inspection (CCI) process, which is available to parents. CCI is an investigative process conducted by the NDE to determine if a public school (including a charter school) or other entity providing special education or services is in compliance with the IDEA. The CCI process authorizes the Nevada Superintendent of Instruction to take appropriate measures if a provider is non-compliant and fails or refuses to comply in a timely manner.

Mediation

Mediation is probably the most expeditious and least costly means to resolve IDEA disputes between parents and school districts. Participation in the mediation process under the IDEA is voluntary. Although not encouraged, attorneys may accompany

their clients. In general, most special education disputes can be addressed in an IDEA mediation. However, for an IDEA due process complaint to be resolved, the parties must sign a binding and confidential agreement that cannot be used as evidence in any proceeding. Mediation agreements are enforceable in state or federal court.

IDEA Due Process Hearing Resolution Process

After an IDEA request for an administrative hearing is filed, subject to a waiver by both parties, a mandatory 30-day resolution period begins that gives the parents of a child with disabilities and their school district the opportunity to resolve the dispute before the hearing may proceed. School districts are required to convene a “resolution meeting” with the parent and certain individuals required by the IDEA within 15 days after receipt of the hearing request. School district attorneys may not attend a resolution meeting unless parents are represented by counsel. The IDEA does not award attorney’s fees for attendance at resolution meetings. **NL**



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