



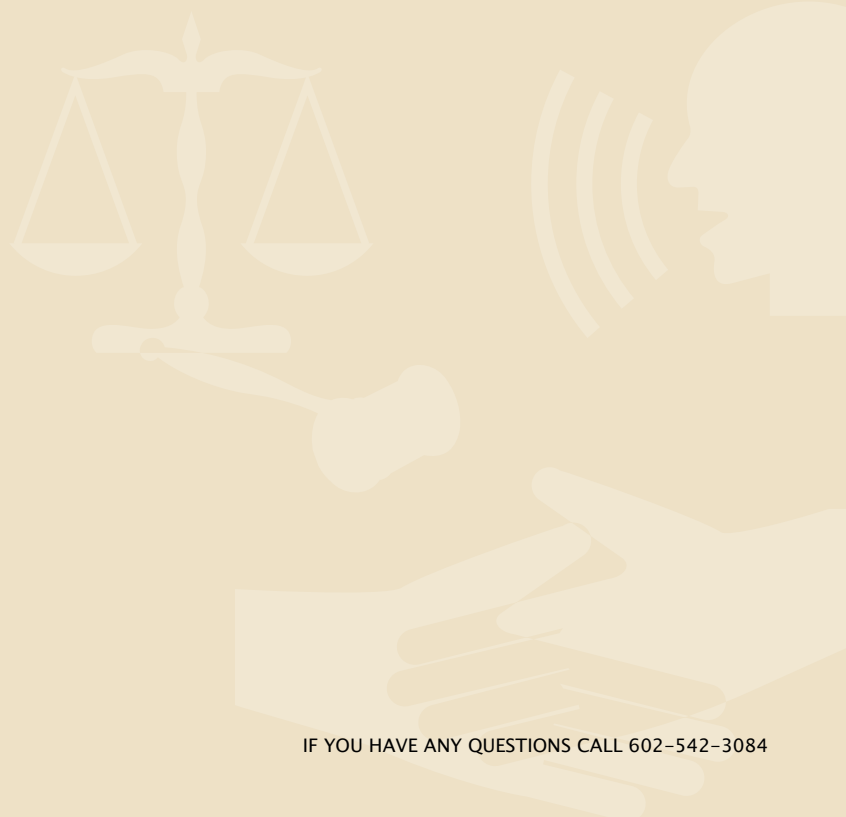
Exceptional Student Services

DISPUTE RESOLUTION

APRIL 2009

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IF YOU HAVE ANY QUESTIONS CALL 602-542-3084

SOLVING PROBLEMS INFORMALLY



When questions or concerns arise regarding your child's special education program, attempt to address the issue with the teacher(s) first. If you have questions or concerns about your child's special education program, you may also request that the school reconvene your child's individualized education program (IEP) team. This request must be in writing, and should be given to the special education teacher or team leader, with a copy to the school principal. At that meeting, keep in mind:

-))) The IEP team needs to work cooperatively to meet your child's needs.
-))) Each member has valuable information to share. Be an active listener, ask questions and make your views known.
-))) No one member should come to the meeting ready with a solution or plan that cannot be discussed or revised. Each member has a responsibility to share in the process.
-))) If it has not already done so, ask the school for "written notice" when the team does not agree. This documentation is important if you feel you need to pursue other dispute resolution options.

Effective communication is very important to clarify the concern(s) and to assist in the problem-solving process. It is important to document your concerns and the efforts you have made to resolve the problem.

-))) If your questions and concerns are not successfully addressed by your child's school, make an appointment to talk to the special education director.
-))) If you are still not satisfied with how your questions and concerns have been addressed, make an appointment with the superintendent or director of your child's school.

You may also contact the organizations listed below for information about what the federal and state requirements say regarding your issue or concern, next steps to take to resolve the problem, support groups in your area, training opportunities and events, and other resources available to assist with the special education process.

PARENT RESOURCES

PARENT INFORMATION NETWORK

Parent Information Network Specialists (PINS) provide parents with information that is essential to actively participate in their child's special education. PINS provide free consultation, training, and resources. A PIN Specialist can be reached Monday – Friday, 8:00 a. m. – 5:00 p. m. at 1-877-230-PINS (7467); by email at PINS@azed.gov or call 928-679-8102 for the PIN Specialist assigned to your county. Resources can be downloaded from www.azed.gov/ess/pinspals.

RAISING SPECIAL KIDS AND PILOT PARENTS OF SOUTHERN ARIZONA

To learn more about your child's disability and parent training opportunities, call Raising Special Kids at 602-242-4366; 800-237-3007, or visit their web site at www.raisingpecialkids.org: questions can be addressed by email at info@raisingpecialkids.org. Pilot Parents of Southern Arizona can be reached by calling 520-324-3150 or 877-365-7220, or visit their web site at www.pilotparents.org: questions can be addressed by email at ppsa@pilotparents.org.

ARIZONA DEPARTMENT OF EDUCATION/EXCEPTIONAL STUDENT SERVICES

Many times a concern can be handled informally by contacting the Arizona Department of Education/Exceptional Student Services (ADE/ESS) Education Program Specialist assigned to the district or charter school. The ADE/ESS Specialist may be called regarding special education matters. To contact the ADE/ESS Specialist for your area call 602-542-4013. Information on special education can also be downloaded from the following web site www.azed.gov/ess.

INFORMATION AND REFERRAL

Many advocacy organizations and support groups can be helpful in assisting with problem solving. Call Community Information and Referral to find assistance at 602-263-8856, from outside Phoenix call 800-352-3792. You can also visit their web site at www.cirs.org. Our Family serves Southern Arizona and can be reached at 520-323-1708; or visit their web site at www.ourfamilyservices.org or by email at info@ourfamilyservices.org.

The Blue Pages provide additional information to local, state, and national disability related resources and can be viewed on the web site at www.azed.gov/ess/SpecialProjects/pinspals/documents/Section504/GR07.pdf.

LEGAL ADVOCACY

For advocacy or legal assistance regarding special education, call the Arizona Center for Disability Law in Phoenix at 602-274-6287 (voice/TTY) or 800-927-2260 (voice/TTY); Tucson 520-327-9547 or 800-922-1447 (voice only) or 877-327-7754 (TTY) or visit their web site at www.azdisabilitylaw.org; questions can be addressed by email at center@azdisability.org.

FORMAL OPTIONS TO CONSIDER

If you are still unable to resolve your issue(s), you may contact the Arizona Department of Education for the following formal dispute resolution options:

- ☛ MEDIATION
- ☛ STATE COMPLAINT
- DUE PROCESS

MEDIATION SYSTEM FOR SPECIAL EDUCATION

THE PROCESS



The Individuals with Disabilities Education Act (IDEA) mandates that states establish procedures to allow parties to disputes involving any matter under IDEA to resolve those disputes through mediation. To that end, mediation is available through the Arizona Department of Education/Exceptional Student Services (ADE/ESS) at no cost to the parent or school. Mediation is an informal, voluntary process during which an impartial mediator helps parents and schools experiencing conflict reach a suitable agreement about a student's special education program. Mediation cannot be used to deny or delay a parent's right to a due process hearing.

- Parent(s) or the public education agency (PEA) representative contacts the ADE/ESS to request mediation.
- The ADE/ESS explains the mediation process, and obtains assurances that both parties are willing to mediate.
- The ADE/ESS staff contacts a randomly selected mediator to facilitate the mediation.
- Upon selection and assignment of a mediator, all parties are notified by ADE/ESS. The mediator contacts the parties to schedule mediation.
- When the mediation is scheduled, the mediator will inform the ADE/ESS of the date, time, and location.
- Materials relating to the mediation process are sent to both the mediator and other parties involved, as appropriate.
- If the parties are able to resolve the dispute through the mediation process, they must issue a legally binding agreement that sets forth the resolution. The mediation agreement must be signed by both parties, and must state that all discussions that occurred during the mediation will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding. A written, signed mediation agreement is enforceable in any state court of competent jurisdiction or in a federal district court.
- Upon completion of mediation, the mediator submits the signed (original) mediation agreement to ADE/ESS and a questionnaire is distributed to the parties asking them to complete and return to the ADE/ESS.
- All mediation documents sent to the ADE/ESS will be maintained in confidential files.

THE MEDIATOR

- Is trained in effective mediation techniques and is knowledgeable in laws and regulations related to special education.
- Contacts both parties prior to the mediation to clarify the issues, gather necessary information and explain the mediation process.
- Schedules the mediation with both parties.
- Determines who may be present during the mediation, limiting the number of participants generally to a maximum of three for each party.
- Encourages open communication.
- Acts as an impartial facilitator, not as a special education expert or decision-maker.
- Establishes an understanding of the nature of the disagreement and determines points of agreement.
- Limits discussions to the current or future aspects of the situation.
- May caucus (meet privately), if necessary, with both parties during the mediation, and maintains confidentiality of those discussions unless the parties otherwise agree.
- Assists the parties in writing a specific, concise mediation agreement to be signed by, and provided to, the parties involved.
- Provides ADE/ESS with the original signed agreement.
- May terminate the mediation if an agreement cannot be reached, or if parties do not follow the agreed upon mediation guidelines.
- Will not participate in due process hearings or future legal proceedings.
- Only one mediator is assigned to a mediation; however, on occasion, a mentor/trainee will attend only to observe.

THE PARTIES

- Agree to approach the mediation in good faith, with the intent of reaching an agreement.
- Present their viewpoint, including all relevant information.
- Meet separately with the mediator when necessary or appropriate. This may occur when sensitive information is to be shared, or when necessary to address private concerns of the parties.

- Ask for clarification whenever material or a point of discussion is not understood.
- Actively participate in mediation and in the drafting of the mediation agreement.
- Schedule an IEP meeting to include any agreed-upon changes to the student's IEP.
- Take those steps necessary to ensure a sufficient amount of time is available to complete the mediation process (generally four to eight hours).

THE SYSTEM

The Arizona Department of Education:

- Maintains a list of qualified mediators.
- Provides mediation at no cost to either party.
- Assigns randomly selected mediators when both parties have agreed to mediate.
- Evaluates and monitors the effectiveness of the mediation system.
- Requires that each party have a participant with the authority to act on behalf of the student and the PEA, respectively.

Mediation:

- Is voluntary.
- Is an informal and effective way to resolve differences in a positive manner.
- Is a problem-solving process, rather than an adversarial process, which requires the parties to communicate directly with each other and to work toward a mutually agreeable solution; therefore, legal representation is not recommended during this interaction. If either party intends to have legal representation, prior notice should be provided to the other party.
- Is generally completed in one-half to one full day.

STATE COMPLAINT SYSTEM FOR SPECIAL EDUCATION

THE PROCESS

Individuals or organizations may file signed written complaints with the Exceptional Student Services Division of the Arizona Department of Education (ADE/ESS), if they believe a public education agency (PEA) responsible for the provision of special education services is not in compliance with state and federal laws or regulations.

A complaint must include:

- ❖ A statement that the PEA has violated a requirement of Part B of the Individuals with Disabilities Education Act (IDEA), its implementing regulations, or a special education law found in Arizona Revised Statutes or the Arizona Administrative Code, but need not identify the specific law or regulation involved.
- ❖ The facts on which the allegation is based.
- ❖ The signature and contact information for the complainant (anonymous complaints will not be processed).
- ❖ If alleging violations with respect to a specific child or children, the child's name and address (in the case of a homeless child, available contact information), and the name of the school the child attends.
- ❖ A proposed resolution of the problem to the extent known and available at the time the complaint is filed.

A complaint:

- ❖ Must allege a violation that occurred not more than **one (1) year** prior to the date that the complaint is received by the Arizona Department of Education.
- ❖ Should be filed with the Director of Dispute Resolution at the Arizona Department of Education/Exceptional Student Services, 1535 West Jefferson, Bin 62, Phoenix, Arizona 85007, and a copy of the complaint must be forwarded to the PEA serving the child.

Once the complaint is received by the ADE/ESS, the parties involved will receive a "Letter of Acknowledgement." This letter will provide the following information:

- ❖ The reference number that has been assigned.
- ❖ The timeline required for completion of the investigation (60 calendar days from the date of acknowledgement of the complaint).
- ❖ The probability of a site visit.

- ❖ How to amend the complaint and who to contact if questions arise.
- ❖ In addition, the PEA will receive a copy of the complaint and any supporting documentation when the “Letter of Acknowledgement” is sent.

Within **seven (7) business days** of receipt of the complaint by the ADE/ESS, the assigned investigator will contact each party in an attempt to facilitate resolution of the dispute by clarifying the issues and focusing on how the parties can work together to meet the child’s educational needs. The parties will be offered the opportunity to voluntarily engage in mediation.

As part of the investigation, the assigned investigator will collect relevant documents, conduct interviews, and, if deemed appropriate, visit the school. Furthermore, the complainant will be given the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint.

The **60 calendar day timeline** may be extended by the Director of Dispute Resolution, or a designee if exceptional circumstances exist with respect to that particular complaint.

If an extension is required, the ADE/ESS will send to all parties a letter that includes a description of the exceptional circumstance(s) and the date by which the “Letter of Findings” will be issued.

Once the investigation has been completed, the investigator will prepare a “Letter of Findings.” The “Letter of Findings” will include factual information, conclusions specific to the complaint allegations, and reasons for the final decision(s) as determined by ADE/ESS. A copy of the “Letter of Findings” will be sent to both parties involved within 60 calendar days of the receipt of the complaint.

Where allegations of noncompliance are found, technical assistance, negotiations, and other types of corrective action(s) (CA) will be required within the timelines as delineated in the “Letter of Findings.”

The Corrective Action Compliance Monitor will track all CA documentation and insure that all CA is complete and received within the stated timelines. A PEA’s failure to comply with CA timelines will result in serious consequences, up to and including the withholding of federal special education funding.

ADDITIONAL COMPLAINT INFORMATION

A written complaint should also contain the following information to help facilitate the process:

- ❖ Print or type the name of the person filing the complaint.
- ❖ The address of the person filing the complaint.
- ❖ Daytime phone number(s) where the complainant can be reached between 8:00 a.m. and 5:00 p.m. Monday through Friday.
- ❖ The date the complaint letter was written.
- ❖ A chronological listing of dates and events that are relevant to the complaint investigation.
- ❖ Copies of any *relevant* documents that should be reviewed, or a list of *any additional* documents that should be reviewed, as part of the complaint.
- ❖ The names and contact information of anyone believed to have relevant information concerning the complaint allegations.
- ❖ Written statements concerning any relevant information that is not documented in some other way.
- ❖ To avoid confusion regarding the purpose of the letter, the ADE/ESS suggests that the letter state that this is a formal complaint. The complainant may use the ADE/ESS model complaint form located at www.ade.az.gov/ess/dispute/complaints

THE INVESTIGATOR

- ❖ The ADE/ESS complaint investigator is a professional staff member who has been trained to investigate special education complaints.
- ❖ Has the authority to review confidential student educational records related to the complaint allegations.
- ❖ Bases their findings and conclusions on the documentation found or reviewed, information obtained through interviews, and the preponderance of evidence.

INVESTIGATION LIMITATIONS

Allegations related to Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act of 1990 are not within the authority of the ADE/ESS to investigate; however, the complainant will be referred to the appropriate investigative agency.

Allegations that fall under civil or criminal law will not be investigated by the ADE/ESS.

Allegations related to unprofessional conduct by education agency personnel are not typically investigated. The complainant will be referred to the public education agency's administration for resolution or to the Investigative Unit of the Arizona State Board of Education.

If a written complaint is received that is also the subject of a due process hearing, or contains multiple issues of which one or more are part of that hearing, ADE/ESS must set aside any part of the complaint that is being addressed in the due process hearing until it is concluded. Additionally, allegations that have been resolved in a due process hearing, or have already been investigated in a previously filed complaint, will not be re-investigated.

DUE PROCESS SYSTEM FOR SPECIAL EDUCATION



THE PROCESS

In accordance with the Individuals with Disabilities Education Act, the Arizona Department of Education/Exceptional Student Services (ADE/ESS) is required to provide a due process hearing system to assist parents of children with disabilities and public education agencies in resolving special education related disputes. A due process hearing may be used to resolve any matter relating to the identification, evaluation, placement of a child, or the provision of a Free Appropriate Public Education (FAPE) to the child. Parents, students who have reached the age of majority, or a PEA may request a due process hearing.

DUE PROCESS COMPLAINT FILING PROCEDURES

The party seeking due process must provide a due process complaint notice to the other party and to ADE/ESS. This may be done by regular United States mail, or fax.

Upon receipt of the request for a due process hearing, the ADE/ESS will assign a case number and forward the due process complaint notice and supporting documentation to the Arizona Office of Administrative Hearings (OAH). OAH will provide ADE with hearing dates and the name of the appointed Administrative Law Judge (ALJ). The parties are then notified by ADE by way of a "Notice of Hearing" that outlines how the process works, the name of the ALJ, the hearing dates, and other pertinent information. From that point on, all questions and correspondence go between the parties and the assigned ALJ.

The PEA must inform the parent of any free or low-cost legal services and other relevant services available in the geographic area if requested by the parent, if a due process complaint is filed. The PEA must also provide Procedural Safeguards Notice (PSN) to the parent once a due process complaint is filed.

DUE PROCESS COMPLAINT NOTICE

The alleged violation for which the party is filing for due process must have occurred not more than **two (2) years** from the date the complainant knew or should have known about the alleged action. There are exceptions when a parent's delay in filing a request was due to specific misrepresentations of the school or where the school withheld information that was required to be provided to the parent.

The party filing a due process complaint notice may either use the form found on the ADE web site at www.ade.az.gov/ess/dispute/dueprocess/, or may submit the complaint in a letter. In either format, a due process complaint must contain specific criteria in order to meet the sufficiency requirements set forth in the federal law.

At a minimum, a due process complaint must include:

- The name of the child and the address of the child's residence.
- The name of the child's school/school district.
- In the case of a homeless child or youth, the child's contact information and the name of the school the child is attending.
- A description of the nature of the problem of the child including facts relevant to the problem.
- A proposed resolution of the problem to the extent known and available by the complaining party at the time.

In order for a due process complaint to go forward, it must be considered sufficient (i.e., it must meet the content requirements above). The due process complaint will be presumed sufficient unless the non-complaining party files a written objection within 15 calendar days of receiving the complaint to both the hearing officer and the other party. The hearing officer has **five (5) calendar days** to determine if the due process complaint notice meets the criteria set forth in the law and must immediately notify both parties in writing of the determination regarding sufficiency.

Once filed, the due process complaint notice can only be amended if the other party consents in writing, and an opportunity for a resolution session is provided, OR by an order of the hearing officer, but not later than five days before the hearing occurs. Hearing timelines recommence when the amended complaint is filed.

Within **10 calendar days** of receiving the complaint, the party against whom due process has been filed must send a response that specifically addresses each issue raised in the complaint. If the PEA is the respondent and it has not already sent a prior written notice to the parent concerning the subject matter of the dispute, the response must include:

- An explanation of the proposed or refused action.
- A description of other options considered by the child's Individualized Education Program (IEP) team and the reasons why those options were rejected.
- A description of each evaluation procedure, assessment, record, or report used as the basis for the proposed or refused action.
- A description of other factors relevant to the decision.

Filing a response does not preclude a party from also challenging the sufficiency of the due process complaint notice. Likewise, a challenge to the sufficiency does not extend the timeline for filing a response.

RESOLUTION

Before a hearing may occur, the PEA must convene a meeting with the parent and the relevant member or members of the IEP team who have specific knowledge of the facts identified in the complaint within **15 calendar days** of receiving the due process complaint notice. The purpose of this meeting – called a resolution session – is for the parties to discuss the complaint and attempt to resolve the issues without the need for a hearing. This meeting must occur unless waived in writing by both parties, or unless both parties agree to mediation. The resolution period is **30 calendar days** from the date the complaint is filed.

The resolution meeting must include a representative of the school who has decision-making authority, but may not include the school’s attorney unless the parents are accompanied by an attorney. The parent and the school determine the relevant members of the IEP team to attend the meeting.

The resolution session or a mediation session must occur before a due process hearing can be held, unless waived in writing by both parties. If the school has not resolved the due process complaint to the parent’s satisfaction within **30 calendar days** of receipt of the due process complaint, the due process hearing may occur. The **45 calendar day** timeline for issuing a final decision begins at the end of the **30 day resolution period**, or upon the parties agreeing, in writing, to waive the resolution meeting, or after the resolution meeting or mediation, agreeing in writing that they are unable to resolve the dispute.

If the parties are able to reach a resolution during the resolution period, they must execute a legally binding agreement which is signed by both parties, and enforceable in a State court of competent jurisdiction or in a federal district court. Either party may void the agreement within three business days of its execution.

DUE PROCESS HEARING

If the parties have waived the resolution session, or if after 30 days, the issues raised in the complaint have not been resolved to the parent’s satisfaction, the hearing process will commence. Initially, the ALJ will conduct a pre-hearing conference either telephonically or at a location that is reasonably convenient to the parents and the child involved, to determine if the complaint is a legitimate due process complaint, to ensure that all matters are clearly defined, to establish the proceedings that will be used for the hearing, to determine who will represent and/or advise each party, and to set the time and dates for the hearing. Parties have the right to:

- Be accompanied and advised by a lawyer and/or persons with special knowledge or training regarding the problems of children with disabilities.
- Present evidence and confront, cross-examine, and require the attendance of witnesses.
- Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing.

- Obtain a written or, at the party's option, electronic, word-for-word record of the hearing.
- Obtain written or, at the party's option, electronic findings of fact and decisions.

The parties to a due process hearing must disclose all evaluations and recommendations to date that it intends to use at the hearing within **five (5) days** prior to the hearing, or face the possibility of not being allowed to introduce that evidence in the hearing. The parent must be given the right to:

- Have the child present.
- Open the hearing to the public.
- Have the record of the hearing, the findings of fact and decisions provided at no cost.

Once a due process complaint is sent to the other party, during the resolution period, and while waiting for the decision of any impartial due process hearing or court proceeding, unless the complainant and the school agree otherwise, the child must remain in his or her current educational placement. If the due process complaint involves an application for initial admission to public school, the child, with parental consent, must be placed in the regular public school program until the completion of such proceedings.

According to the United States Supreme Court decision in *Schaffer v. Weast*, the burden of proof in an administrative hearing is on the party filing for the hearing.

A final hearing decision must be issued no later than **45 calendar days** after the expiration of the **30 calendar day** period for resolution meetings, and a copy of the decision must be mailed to each of the parties. A hearing officer may grant specific extensions of time beyond the **45 calendar day** time period at the request of either party.

EXPEDITED DUE PROCESS HEARING

The parent of a child with a disability may file a request for an expedited due process hearing if he or she disagrees with: (1) any decision regarding placement made under the special education discipline provisions; or (2) the manifestation determination. A PEA may request an expedited due process hearing if it believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.

Unless the parents and the school agree in writing to waive the meeting, or agree to use mediation, a resolution meeting must occur within **seven (7) calendar days** of receiving notice of the due process complaint. The hearing may proceed unless the matter has been resolved to the satisfaction of both parties within **15 calendar days** of receipt of the due process complaint. An expedited due process hearing must be conducted within **20 school days** of the date the hearing request is received, and the hearing officer has **10 school days** after the hearing to issue a decision.

The student remains in the Interim Alternative Educational Setting (IAES) pending the hearing officer's decision or until the disciplinary period expires, whichever occurs first, unless the parties agree otherwise.

APPEAL

Any party who does not agree with the findings and decision in the due process hearing (including a hearing relating to disciplinary procedures) has the right to bring a civil action with respect to the matter that was the subject of the due process hearing. The action may be brought in a State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy. In Arizona, the party bringing the action shall have 35 calendar days from the date of the hearing decision to file a civil action.

HEARING OFFICER IMPARTIALITY

In Arizona, "impartial hearing officer" is defined as a person or tribunal assigned to preside at a due process hearing whose duty it is to assure that proper procedures are followed and that rights of the parties are protected. The IDEA sets forth the minimum qualifications for hearing officers, stating that they must: 1) not be an employee of the State Educational Agency or the school responsible for the child; 2) not have a personal or professional interest that would present a conflict of interest; 3) have knowledge and understanding of special education law; 4) be able to conduct hearings in accordance with appropriate, standard legal practice; and, 5) render and write decisions in accordance with appropriate, standard legal practice. Arizona laws mirror these federal requirements.

ATTORNEY FEES

Parents may recover attorney's fees from the PEA, at the discretion of the judge, if they are the prevailing party.

Fees may be recovered from the parent's attorney for filing a complaint, or continuing litigation, that is frivolous, unreasonable, or without foundation.

Fees may be recovered from the parent or the parent's attorney for filing a complaint or otherwise continuing litigation for an improper purpose such as harassment, to cause unnecessary delay, or to needlessly increase the cost of litigation.

Fees cannot be recovered for time spent in an IEP meeting unless the meeting was convened as a result of an administrative or judicial proceeding. States have individual discretion to determine whether to allow attorney's fees to either side for time spent in mediation.





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