

NEVADA DEPARTMENT OF EDUCATION

COLLABORATIVE PROBLEM SOLVING IN SPECIAL EDUCATION

OVERVIEW

The development and implementation of appropriate educational programs for children with disabilities are important and complex responsibilities and, sometimes, may lead to disagreements between schools and parents. The Individual with Disabilities Education Act (IDEA 20 U.S.C. §§1400 et seq.; 34 C.F.R. Part 300) and the Nevada Administrative Code (NAC, Chapter 388; See also Nevada Revised Statutes (NRS), Chapter 388) anticipate these disagreements and provide a range of dispute resolution processes to help parents and schools resolve them. The processes include:

- Mediation, available before and after requesting a Due Process Hearing or a State Complaint investigation;
- Due Process Hearings, including a Resolution Meeting; and
- State Complaints¹.

The Nevada Department of Education encourages parents and school personnel to first work together at the school level to solve problems that arise concerning special education. That is the best way to resolve any disagreement. When problems are resolved at the school level, the partnership between the parents and the school is strengthened. To support problem solving between parents and schools when the involvement of an impartial individual is needed to reach agreement, the Nevada Department of Education offers additional assistance through Individualized Educational Program (IEP) Facilitation.

The dispute resolution processes all have the same intended result: to resolve emerging or existing disputes. However, the formality of the process; the cost of the process to the parties; the possible outcomes; and who has the decision-making power differ:

- IEP Facilitation. This process is the most informal, and the parent and the school district retain the power to decide what services to include in the child's IEP. The trained impartial Facilitator is paid by the Nevada Department of Education.
- Mediation. This process is also informal, and the impartial Mediator is paid by the Nevada Department of Education. Both the parent and the school district

¹ All of the dispute resolution processes are available to parents of children with disabilities, or children suspected as having disabilities, and the responsible school district. The State Complaint process is also available to any other individual or organization and, in addition to being filed against a school district, may be filed against any public agency responsible for providing education to children with disabilities.

must agree to mediation and retain the power to decide how to resolve the disagreement.

- The State Complaint process is a more formal option than IEP Facilitation or Mediation, but less costly than a Due Process Hearing. State Complaints may be filed to allege that a school district violated special education law, and the Nevada Department of Education decides whether a violation occurred. The Complaint investigation is conducted by an investigation team through the Nevada Department of Education. The Department, not the parties, determines whether a violation occurs and the appropriate remedy, if any.
- A Due Process Hearing is the most formal and most costly resolution option available to a parents and school district to resolve certain educational disagreements. The Hearing Officer has the decision-making power on the educational decisions, not the parties. The impartial Hearing Officer is appointed by the Nevada Department of Education and paid for by the school district. While some other hearing costs are paid for by the school district, each party incurs costs such as time involved in participating in the hearing process, costs of witnesses appearing at the hearing, and duplication of documents to be submitted to the Hearing Officer. The hearing decision is final, unless it is appealed to a State Review Officer. The impartial State Review Officer is appointed and paid by the Nevada Department of Education.

How Do You Select the Right Option For You?

The particular circumstances of a problem, including what the problem is; how long the problem has been going on; previous efforts to solve the problem; and desired results will determine which option will best meet your interests at any point in time. (While the options described in this document are listed in order of increasing formality, you may request any of the options at any time.)

For additional information on any of the alternative dispute resolution options described below, you may contact your local school district or the Nevada Department of Education at the address below.²

Local Problem Solving

As stated above, school personnel and the parent should first attempt to work out differences and disagreements together, if they arise. The longer a problem exists and the further resolution is removed from the school level, the harder it may become for the school and parent to maintain a strong working partnership. If a problem involving a

² Nevada PEP is an additional resource for information for parents of students with disabilities. Nevada PEP is a nonprofit organization that provides information, services and training to Nevada families of children with disabilities statewide. Nevada PEP is the designated Parent Training and Information Center funded by the United States Department of Education under the IDEA. The toll-free telephone number for Nevada PEP is (800) 216-5188.

child's eligibility, evaluation, placement, or IEP is resolved by working together at the local level, the resolution needs to be included by the Team in the proper document.

IEP Facilitation

If an IEP Team is having difficulty developing, reviewing, or revising a student's IEP, IEP Facilitation is available to assist the Team. In addition to local IEP facilitation options, the Nevada Department of Education offers IEP Facilitation with an impartial Facilitator. The Nevada Department of Education appoints and pays for the Facilitator. It is a voluntary process; that is, both the school district and the parent must agree to the participation of the Facilitator in the IEP process.

An IEP Facilitator will guide the IEP Team through the IEP process, creating an environment that allows all IEP members to be heard, and consensus to be reached. The Facilitator's role is to help keep members of the IEP Team focused on the development of the IEP and assist the Team, if necessary, in addressing conflicts and disagreements if they arise.

The IEP Facilitator does not make decisions for the IEP Team, but rather assists the parent and school district in reaching agreement about the content of the child's IEP. So long as the IEP Team agrees, the outcome may result in a major change in the child's IEP. A parent and the school district can request IEP Facilitation from the Nevada Department of Education by contacting the Department at the address or phone number below.

Mediation

Mediation is available to resolve problems that arise at any time between a parent and the school district on the provision of appropriate special education and related services to a child with disabilities, or a child suspected of having disabilities (any matters under the IDEA, 34 C.F.R. Part 300, and the NAC, Chapter 388). Mediation remains available to a parent and school district after a Due Process Hearing is requested or a parent files a State Complaint.

The Nevada Department of Education appoints and pays for the impartial Mediator. It is a voluntary process; that is, both the school district and the parent must agree to participate and, once Mediation has begun, either one may end it at any time. Mediation may not be used to deny or delay a parent's right to a hearing on the parent's due process complaint, or to deny any other rights afforded under the IDEA. (34 C.F.R. Part 300)

In Mediation, the impartial trained Mediator works with the parent and the school district through a structured, yet informal, meeting to clarify the problem(s) and to assist them in resolving the conflict. The parties retain the power to decide how to resolve the disagreement, and so long as both parties agree, the outcome may cover many topics, such as an agreement that the district will pay for an independent educational evaluation, an agreement to change the child's placement, or an agreement to reconsider a child's

eligibility category through a reevaluation. Discussions that occur during Mediation are confidential and may not be used as evidence later in a Due Process Hearing or a civil proceeding in court.

If a mutually acceptable agreement is reached by the parent and school district, the Mediator will make sure the agreement is documented in a written agreement. The parent and the school district will be bound by this written agreement and it can be enforced if either party does not follow the agreement. Even if a formal agreement is not reached, Mediation may be helpful in clarifying the problem(s) to make sure that if a Due Process Hearing or Complaint investigation follows, it is focused on the actual issues of dispute between the parties. A parent and a school district may request Mediation by contacting the Department at the address or phone number below.

State Complaint

A parent or other individual or organization may file a written and signed complaint with the Nevada Department of Education if they believe a school district has violated special education law, such as not implementing a child's IEP or not following required timelines or procedures. (Special education law: IDEA, 20 U.S.C. §§1400 et seq.; 34 C.F.R. Part 300 or NRS or NAC, Chapter 388)³

The person filing the State Complaint (the complainant) must send a copy of the complaint to the school district at the same time as the complaint is filed with the Department. The complaint must be about a violation that occurred not more than one year before the date that the written and signed complaint is received by the Department.

The complainant will have an opportunity to submit additional information, either orally or in writing, about the allegations in the complaint. The school district will have an opportunity to respond to the complaint and may make a proposal to the complainant to resolve the complaint. In addition, if the complainant is a parent, the parent and the school district can voluntarily agree to mediate the matter. If the complaint is not resolved through Mediation, the Nevada Department of Education will investigate the alleged violations of law and reach a decision.

The outcome of a State Complaint will be a determination by the Nevada Department of Education whether the school district violated special education law, and a corrective action(s) will be ordered, if needed. While the proposed resolution of a complainant will be considered, the Department is not bound by the proposed resolution of the

³ Allegations of discrimination and other civil rights violations under Section 504 of the Rehabilitation Act (Section 504: 29 U.S.C. Sections 705, 794, 794a, 794b; 34 C.F.R. Part 104) and the Americans with Disabilities Act (ADA: 42 U.S.C. Sections 12101 et seq. and 28 C.F.R. Part 35) are not under the jurisdiction of the Nevada Department of Education's State Complaint system. Both Section 504 and the ADA provide parents with grievance procedures at the local school district level. You may contact your school district for information on the local grievance procedures or file a complaint directly with the Office of Civil Rights, Region IX, 90 7th Street, Suite 4-100, San Francisco, Ca. 94103, (800) 368-1019; TDD (800) 537-7697.

complainant. The corrective action may include a required change in policies and procedures as well as an individual child remedy. The corrective action with regard to a specific child may result in orders such as implementation of an agreed upon IEP; provision of services to make up for services in the IEP not provided; or reimbursement to a parent for those services if privately provided. However, there are limitations to the remedies available. For example, the Nevada Department of Education cannot overturn a decision of an IEP Team or Eligibility Team or change a student's grades through the complaint process.

If a parent, individual, or organization believes a school district has violated special education law, a written and signed complaint may be filed with the Nevada Department of Education at the address below. A model form that provides the required content for a request is available on the Nevada Department of Education's website: _____

Due Process Hearing

Due Process Hearings resolve disagreements between a parent and a school district on the evaluation, identification (eligibility), or educational placement of a child with a disability (including certain issues involving discipline), or the provision of a free appropriate public education to the child (such as a disagreement on the content of the IEP). A Due Process Hearing is the most formal resolution option. It is available to either a parent or a school district and, with some exceptions, a Due Process Hearing must be requested within two years after the requesting party knew or should have known about the dispute.

The outcome of a Due Process Hearing will be a determination by the Hearing Officer. Although Due Process Hearings are not as formal as being in court or in some hearings in other State agencies, there are specific timelines and rules for the parent, the school district, and the Hearing Officer to follow. Both the parents and the school district will have the opportunity to present their point of view through witnesses and documents to a trained impartial Hearing Officer in a hearing. The Hearing Officer will schedule the hearing, be in charge of the hearing process, make decisions on requests by the parents and/or the school district, and, after the hearing is held, issue a decision on the issues of disagreement that must be followed by the parties. A Due Process Hearing decision can be appealed to a State Review Officer, and then to court.

Resolution Meeting: After a Due Process Hearing has been requested by a parent, there is another opportunity for the parent and school district to meet to resolve the disagreement. This process is called a Resolution Meeting, and it must occur within 15 days after the filing of a request for a Due Process Hearing, unless the parents and district agree not to hold the Resolution Meeting or use Mediation instead.

The Resolution Meeting includes the parent, members of the IEP Team relevant to the disagreements in the Due Process Hearing request, and a representative of the school district who has decision-making authority. The purpose of the Resolution Meeting is for

the parent to discuss the Due Process Hearing request, including the reasons for the request, so that the school district has the opportunity to resolve the problem(s). If there is a Resolution Agreement, it will be in writing and is binding and enforceable.

To request a Due Process Hearing, a parent must file a written request with the Superintendent of the school district. At the same time, a copy of the request must be sent to the Nevada Department of Education at the address below. A model form that provides the required content for a request is available on the Nevada Department of Education's website: _____

State Review: If either party disagrees with the decision of the Hearing Officer, they may appeal to a State Review Officer to overturn the decision. The trained impartial State Review Officer is appointed by the Nevada Department of Education and paid for by the Department. The State Review Officer will:

- (a) Review the entire hearing record;
- (b) Make sure parties were provided a fair hearing; and
- (c) If necessary to obtain any additional evidence, conduct a hearing.

The State Review Officer will make an independent decision on the completion of the review and will either uphold or change the Hearing Officer's decision. The State Review Officer's decision is final, unless either party appeals to court.

To request a State Review of a Due Process Hearing decision, a written request must be filed with the Nevada Department of Education at the address below with a copy to the other party. An appeal must be requested within 30 days after receiving the Hearing Officer's decision. Upon receipt of the copy of the request for a State Review, the party who did not appeal has an additional 10 days to also request a review.

ADDRESS:

Nevada Department of Education
Office of Special Education
700 E. Fifth St.
Suite 113
Carson City, NV 89701-5096
Phone Number: (775) 687-9171