



OLR RESEARCH REPORT

January 7, 2011

2011-R-0010

INDIVIDUALIZED EDUCATION PLAN AND 504 PLAN COMPLAINT PROCESSES

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You asked for a summary of the processes for reporting and resolving complaints about (1) special education individualized education programs (IEPs) developed under the federal Individuals with Disabilities Education Act (IDEA) and (2) accommodation plans for students with disabilities developed under § 504 of the federal Rehabilitation Act of 1973 (504 plans). You also asked whether these procedures vary from state to state.

SUMMARY

Both IEPs and 504 plans are mandated by federal law and the processes for reporting and resolving complaints about how the laws are implemented are specified in federal regulations. Thus, states and school districts have limited discretion in implementing processes for resolving complaints about the plans and procedures vary only slightly from state to state.

Federal regulations give parents who have a complaint about their child's IEP or its implementation more than one path to resolve it. One is a quasi-judicial due process hearing, in which parents and the school district present evidence on the dispute to an impartial hearing officer. The hearing officer issues a decision, which can then be appealed by either party to state or federal court. The other is the less formal complaint resolution process in which, depending on the state, an employee of the state education agency or another entity, investigates a complaint and issues a decision. In Connecticut, as in most other states, such complaints must be filed with the state education agency. A few states require complaints to be decided by another entity, such as local school district, and then reviewed by the state.

Decisions are final and cannot be directly appealed to court. But parents may ask for a due process hearing on the same issues if they are not satisfied. Federal regulations also require states to implement mechanisms to help parents and school districts settle disputes, including resolution meetings and voluntary mediation. In addition to these required measures, Connecticut also offers parents and school districts the option of seeking an advisory opinion about their issues from an independent hearing officer before embarking on a due process hearing.

Section 504 of the federal Rehabilitation Act of 1973 protects the rights of people with disabilities in programs that receive federal financial assistance. Unlike the special education law, the rehabilitation act makes the entity that receives the federal assistance responsible for establishing a mechanism for resolving disputes. The mechanism must meet federal requirements. Some states use their IDEA complaint resolution process to adjudicate § 504 complaints, which the federal law expressly permits. Connecticut is one of a minority of states that does not do so. Thus, Connecticut parents who have an issue with their child's 504 plan must file complaints either with a local school district or directly with the U.S. Department of Education's Office for Civil Rights (OCR).

IDEA COMPLAINTS

Children with eligible disabilities have a right to special education and related services if (1) the disability adversely affects educational performance and (2) the student needs a specially designed instructional program, known as an individualized education program or IEP, to address his or her unique educational needs (20 USC § 1400 *et seq*; CGS §§ 10-76a-10-76i).

Connecticut parents who have a complaint about their child's IEP or its implementation by a school district have more than one path to resolve it. One is the complaint resolution process, in which an employee of the State Department of Education's (SDE) Bureau of Special Education investigates the complaint and issues a decision. The other is a formal due process hearing in which parents and the school district present evidence on the dispute to an impartial hearing officer. Unlike the complaint resolution process, school districts as well as parents can request a special education due process hearing; parties to the hearing commonly have legal representatives present; and an aggrieved party may appeal the independent hearing officer's decision to state or federal court.

The two processes are not mutually exclusive and can overlap. Federal regulations establish the procedural requirements for each process. States must follow the federal requirements, which leave only a few areas to state discretion. Connecticut's special education complaint resolution and due process procedures closely follow the federal requirements, as summarized below.

Complaint Resolution Process

Federal regulations require each state education agency to establish a process to allow parties to resolve disagreements concerning denial of special education services, the appropriateness of services, or failure to comply with IDEA requirements. Under the regulations, each state education agency must include measures to (1) address a failure to provide appropriate services for a special education student and (2) require corrective measures for such a failure, such as compensatory services or monetary reimbursement (34 CFR § 300.152).

At the state's option, the process can require complaints to be filed directly with the state education agency or with another entity followed by state education agency review (34 CFR § 300.151). Like 40 other states, Connecticut requires complaints to be filed directly with the SDE. Only 10 states have a so-called "two tier" system that requires complaints to be filed with another entity with decisions reviewed by the state education agency: Colorado, Indiana, Kansas, Kentucky, Nevada, New York, North Carolina, Ohio, Oklahoma, and South Carolina.

Federal regulations require that a complaint be in writing and signed. Complaints are limited to alleged violations that occurred within one year of the date of the complaint and must include the following information:

1. a statement of the school district's alleged violation;
2. the facts on which the allegation is based;
3. if the complaint relates to a particular student, the student's name, address, and residence;
4. the name of the student's school;
5. a description of, and the facts relating to, the student's problem; and
6. if, and to the extent that, the complainant knows of one, a proposed resolution to the problem.

The complainant must forward a copy of the complaint to the school district or educational agency serving the student when the complaint is filed (34 CFR § 300.153).

A complaint process must have the following elements:

1. a 60-day time limit for the state agency to carry out its investigation;
2. on-site investigations, if the state agency considers it necessary;
3. an opportunity for the complainant to submit additional information about the complaint, either orally or in writing; and
4. an opportunity for the school district to respond to the complaint, including at least (a) at the district's discretion, offering a proposal to resolve the complaint and (b) an opportunity for the parent and the district to voluntarily engage in mediation.

The state agency must: (1) review all information and make an independent determination of whether the school district is violating the federal law, (2) issue a written decision that addresses each allegation and contains findings of fact and conclusions, and (3) state the reasons for its decision (34 CFR § 300.152).

Due Process Hearing

Another avenue for resolving a complaint about a special education identification, services, or placement is the due process hearing. This process involves submitting the dispute to an independent hearing officer. Unlike the complaint resolution process, which is available only to parents, either a parent or a school district can initiate a due process hearing. Federal regulations establish strict procedural requirements for special education due process hearings and states have only limited discretion to depart from them (34 CFR § 300.501 *et. seq.*).

A parent or school district asking for a due process hearing must do so within two years of the alleged violation. If parents ask for a hearing, the school must tell them that a state mediation process is available to help settle the issues. If asked, the school must inform the parents of any free or low-cost legal and other services related to the matter that are available in the area.

In a hearing request, a parent or school district must provide the same written information as required for the complaint resolution process. The hearing request must be sent to the other party with a copy to the state education agency.

The federally required process includes time limits for parties to respond to a due process hearing request; procedures for amending a request; and an option for mediation, if both parties agree to it. In addition, if a parent files the hearing request, federal regulations require the school district to hold a “resolution meeting” within 15 calendar days after the complaint is filed and again every time the parent amends the complaint. If the complaining parent chooses to come to the resolution meeting without a lawyer, the school district is not permitted to have its lawyer present either (34 CFR § 300.510 (a)(ii)). A school district has 30 days to resolve the complaint, either through the resolution process or mediation. Any agreement reached through resolution meetings or mediation is binding on the parties and enforceable in state or federal court (34 CFR § 300.510(d)).

After a hearing request has been filed and before the hearing begins, Connecticut also allows parents and a school district to mutually agree to ask SDE for an advisory opinion on the case. Under this option, the parent and the school state their positions briefly to a hearing officer in one day. The hearing officer then tells the parent and the school how he or she thinks the issues would be decided if the parent and the school went on to a full hearing. If the parties do not accept the advisory opinion, they may go on to a full hearing with a different hearing officer.

If the resolution process fails, the parties proceed to a full due process hearing. The independent hearing officer must issue a written decision on the case within 45 days after the end of the 30-day resolution phase. Unless state law provides otherwise, a party aggrieved by the decision has 90 days to appeal it to state or federal court (34 CFR § 300.516 (a)).

Federal regulations bar any issues being adjudicated in a due process hearing from being simultaneously investigated under the informal complaint resolution process (34 CFR §300.152(b)(1)(ii)).

504 PLAN COMPLAINTS

A student with a disability is covered by § 504 whether or not he or she is eligible for special education. A student qualifies for § 504 protection if he or she (1) has a physical or mental impairment which substantially limits one or more major life activities, (2) has a record of having such an impairment, or (3) is regarded as having such an impairment. Federal regulations require

public schools to provide services and related aid to meet the educational needs of a student with a disability as adequately as those of a student without a disability.

Unlike IDEA, § 504 puts the sole responsibility for due process hearings on the program that receives the federal assistance. This means that complaints of violations of the law must be addressed to the school or school district involved, not the state, and that school districts are responsible for setting up a system for resolving complaints that meets federal requirements.

Although federal dispute resolution requirements for § 504 complaints are less prescriptive than those for IDEA issues, federal regulations require a school district or school receiving federal aid to have procedural safeguards that include (1) notice, (2) opportunity for a student's parents to examine relevant records, (3) an impartial hearing with the student's parent having an opportunity to participate and be represented by a lawyer, and (4) a review procedure. The regulations expressly state that using the IDEA dispute resolution system meets these requirements (34 CFR § 104.36).

Although a few states, such as Massachusetts, New Jersey, and Pennsylvania, use their IDEA independent hearing officer systems to also decide § 504 disputes, Connecticut does not. In a 2009 Circular Letter to school superintendents, the education commissioner explicitly stated that the IDEA and § 504 due process systems "are unique and independent of each other." Although parents of students with disabilities under § 504, like those of special education students, have the right to an impartial hearing concerning "the identification, evaluation, or educational placement" of a student with a disability, SDE "does not conduct these hearings; these hearings are the responsibility of the local school district." The commissioner's letter also emphasized that the following procedures available to resolve special education disputes are not available to resolve § 504 complaints: state mediation, state advisory opinions, and the state due process hearing and complaint resolution procedures described above.

Thus, a complaint regarding a § 504 plan can be filed with the appropriate school district. Federal regulations require each such district with more than 15 employees to have both a § 504 coordinator and a disability discrimination grievance procedure (34 CFR § 104.7).

Complaints may also be filed with the U.S. Department of Education's Office of Civil Rights (OCR). The deadline for filing a complaint with OCR is 180 days after the parent first knew of a violation or, if the parent first uses a local district's grievance procedure, within 60 days after the last action under that process. The OCR complaint process is described fully on its [website](#), which also allows a parent to file an [electronic](#) complaint.

HYPERLINKS

Connecticut State Department of Education, Bureau of Special Education, "Complaint Resolution Process," revised June, 2010.

http://www.sde.ct.gov/sde/lib/sde/PDF/DEPS/Special/Complaint_Resolution.pdf

Connecticut State Department of Education, Bureau of Special Education, "Steps to Protect a Child's Right to Special Education: Procedural Safeguards," Section E.

http://www.sde.ct.gov/sde/lib/sde/pdf/DEPS/Special/Prosaf_fullversion.pdf

McQuillan, Mark A., "Section 504 of the Rehabilitation Act of 1973: Procedural Safeguards," Circular Letter: 13, Series 2008-2009, May 20, 2009.

<http://www.sde.ct.gov/sde/lib/sde/pdf/circ/circ08-09/c13.pdf>

Perry A. Zirkel, Ph.D., J.D., LL.M., and Brooke L. McGuire, J.D., "A Road Map to Legal Dispute Resolution for Students with Disabilities," *Journal of Special Education Leadership*, October 15, 2010, pp. 100-112.

<http://www.directionservice.org/cadre/pdf/Roadmap%20to%20Legal%20Dispute%20Resolution%20for%20Students%20with%20Disabilities.pdf>

Perry A. Zirkel and Gina Scala, "Due Process Hearing Systems Under the IDEA: A State-by-State-Survey," *Journal of Disability Policy Studies*, 21(1), pp. 3-8.

<http://www.directionservice.org/cadre/pdf/Due%20Process%20Hearing%20Systems.pdf>

U.S. Department of Education, Office of Civil Rights, "OCR Complaint Processing Procedures." <http://www2.ed.gov/about/offices/list/ocr/complaints-how.html>

U.S. Department of Education, Office of Civil Rights, online complaint form, <http://www2.ed.gov/about/offices/list/ocr/complaintintro.html>

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