

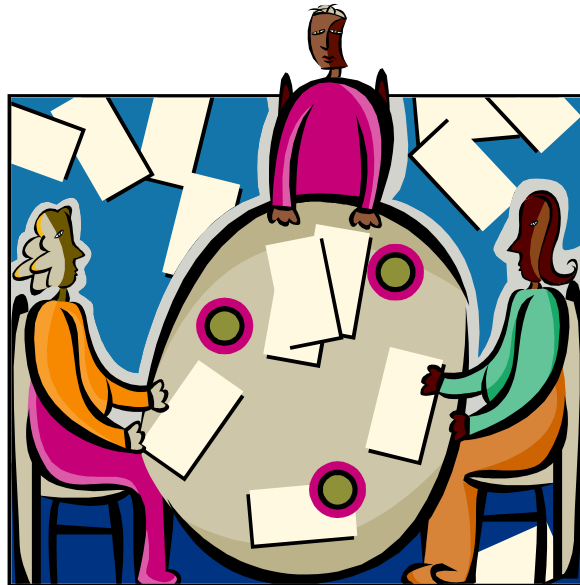


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Empowered Parents: Educated, Engaged, Effective!

The Resolution Session under IDEA 2004: A Guide for Parents



REQUESTING DUE PROCESS: THE RESOLUTION SESSION

The Individuals with Disabilities Education Improvement Act of 2004 (IDEA) establishes a new conflict resolution procedure, “the resolution session.” If you feel that your child’s educational rights are being violated, or you disagree with the district’s IEP, services, placement, or any other aspect of special education, you must file a complaint with the school district (with a copy to the state).¹ You must provide the district with information concerning your child’s name and address; your contact information; area(s) of concern/description of the problem/facts; and your proposed solution.

The district must then decide to:

- File a response within 10 days of receipt of your complaint, and schedule a “resolution session;”
- File a response within 10 days of receipt of your complaint, and agree to let the due process hearing go forward without a resolution session; or
- Notify you and the state hearing officer within 15 days of receipt of your complaint that they are challenging the sufficiency of your complaint notice.²

If the district has not sent a prior written notice to you regarding the subject of the complaint, the district must include in its response:

- An explanation of why the district proposed or refused to take the action raised in the complaint;
- A description of other options the IEP team considered and why those options were rejected;
- A description of each evaluation procedures, assessment, record or report the district used as the basis for the proposed or refused action; and
- A description of the factors that are relevant to the district’s proposal or refusal.

Conducting the Resolution Session

If the district decides to conduct a resolution session, you and the district meet to try to resolve the problem. The school district must convene the meeting with you and relevant members of the IEP team within 15 days of when the school district receives your due process complaint, unless you and the district agree in writing to waive the session or agree to mediation. The school district has 30 days from the time the complaint is filed to resolve the complaint to your satisfaction, after which a due process hearing can occur. If you do not bring an attorney to the resolution session, the district may not bring an attorney. (You may not be reimbursed for attorney’s fees from a resolution session). IDEA does not specify who must attend the resolution session, except that someone who is authorized to enter into an agreement with you must attend.

If you and the district come to a resolution, your agreement is written and signed by both parties. Either side has the right to change their mind within 3 days after the agreement is signed.

¹ If the district files a request for due process, you must send the district a response that addresses the issues raised in their request within ten days of your receipt of the complaint.

² You and the district may also agree to mediation in lieu of the resolution session.

If you and the district do not come to a resolution, you can proceed to the due process hearing. The impartial hearing officer must issue a decision within 45 days.

Proceeding with the Due Process Hearing without a Resolution Session

You and the district may agree that a resolution session would not be productive and to let the hearing proceed. At this point, the hearing would proceed and a decision should be reached within 45 days of the state's receipt of your request for a hearing. You may also avoid the resolution session by participating in mediation.

Alleging that Notice is Insufficient

The district may allege that your notice does not meet the legal requirements set forth in IDEA 2004. The district must formally declare that the notice is insufficient within 15 days of receipt of your request. The impartial hearing officer then has 5 days to review the notice, the district's objection to the notice, and to issue a determination on the complaint's legal sufficiency.

If the hearing officer determines that the notice is *sufficient*, the district must respond to the complaint within 10 days, and offer to conduct a resolution session. (See ***Conducting the Resolution Session***, above).³ If the hearing officer determines that the notice is *insufficient*, you must amend the complaint and resubmit it. The timeline then starts all over again.

Filing a "legally sufficient" complaint

Before you write your complaint, contact the State Department of Education and/or the Statewide Parent Advocacy Network (SPAN), your state parent training and information center to get a sample complaint form that you can use. SPAN has developed an easy-to-use, "fill in the blanks" forms for families to use when filing a complaint with their district. The purpose of these sample forms is to make sure that you provide sufficient information on each required component of the complaint.

Here are some tips to write a "legally sufficient" complaint.

First, make sure that you include in your complaint your child's name and address; your contact information; any and all areas of concern, including a brief but complete description of the problem(s) and the facts as you believe them to be true; and your proposed solution(s). Although it is not required, it is helpful to refer to the relevant sections of federal and state law and regulation that you feel the school or district have violated. By citing directly to the law, you are notifying the district of the specific violations that have caused your concern. Citing to the law also helps you think about exactly why you disagree with what is happening, and identify what you would like to see happen to resolve your concerns.

³ The statute is actually silent as to the timeline for responding to the parental complaint and holding the resolution session if the district challenges the sufficiency of the parent's complaint notice. The regulations interpret the statute as allowing the district to start the timeline as of the date that the parent's complaint is determined to be legally "sufficient."

As you are writing your complaint, you may also contact SPAN at 800-654-SPAN for technical assistance in completing the complaint in a “legally sufficient” manner. SPAN can help you talk through your concerns. Why exactly do you feel that your child’s program or placement is not appropriate? What kind of “evidence” or facts do you have to support your position? What would you like to see happen differently? Issues can be divided into three main categories:

- *Clear violations of the law regarding services to your child:* For example, your child’s IEP may not be being implemented. The IEP requires three sessions of speech each week, but only two sessions are being provided, or your child hasn’t had speech services in a month. In this case, your complaint should state the specific section of the law that you feel is being violated and the evidence that you have to support their position. Any documents directly from the school or district are particularly useful.
- *Disagreement regarding whether or not your child is receiving a “free, appropriate public education in the least restrictive environment.”* For example, you may want your child to be educated in the inclusive classroom, but the district is insisting that your child be educated in a self-contained classroom with little or no opportunity to interact with non-disabled peers. In this case, your complaint should cite the relevant section of the law, information on the research-base (i.e., research that students with disabilities generally receive a better education in an inclusive setting), any documentation from professionals that supports your contention, and your proposed solution.
- *Allegations that the district has violated your procedural safeguards.* For example, you may be concerned because you have not received a copy of your child’s IEP even though the IEP is allegedly being implemented and you have repeatedly requested a copy. In this case, you should cite the relevant section of the law, the facts that support your allegation, and your proposed resolution. (This is the type of allegation that is most likely to be resolved through the resolution session.)

Preparing to Write and the Complaint and to Participate in the Resolution Session

As you are writing your complaint, identify the following:

- What are the facts of the situation? What happened that should not have happened? What didn’t happen that should have happened?
- What is the relevant law that relates to the facts?
- How can the law be applied to the facts?
- What is your proposed solution? What are you willing to settle for?

Once your complaint is written and submitted, it is time to plan and walk through your presentation of your complaint at the resolution session:

- Start out stating positively what your child’s IEP requires, or what you believe your child needs for a free, appropriate public education, as well as any evidence or documentation that you have to support your ideas.
- Then state what is actually happening and any “evidence” you have to support your ideas.
- Identify the sections of the law that you believe are being violated and provide any documentary or other “evidence” of the violation.

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- Close the presentation of your complaint with your proposed solution. Make sure you don't present your "fall back" position until after a complete and thorough discussion with the district, and a consideration of what the district is offering, as well as an analysis of the benefits and drawbacks of compromising.

Consider what the district might say in response to your complaint, and then what you might say.

It's also important to consider who you might want to bring with you to the session.

- Is there a professional who supports your ideas, such as a private service provider, a Boy or Girl Scout or religious education leader, etc.?
- Is there a friend or family member who could accompany you?
- Do you want to bring your child with you to the meeting?
- Do you have difficulty with the English language, limited literacy, or a disability, and therefore need an advocate or someone from SPAN to accompany you? (If you have limited English proficiency, request that the district provide an interpreter at the resolution session. SPAN may be able to identify a Resource Parent to accompany you to ensure that the interpretation is accurate and doesn't compromise your or your child's rights).

Once you have a written plan of presentation and response, do a "run through" or "role play" so that you have the chance to "practice" your presentation.

If a SPAN staff member or Resource Parent can't accompany you to the resolution session, ask if they can schedule a TA specialist to be available on the phone at the time of the resolution session in case you need to call because something occurs that you are not prepared for, or because you need support during the resolution session.

Be sure you are clear what will happen if resolution is reached or resolution is not reached at the session, including the timeline. If you and the district come to a resolution, your agreement is written and signed by both parties. Either side has the right to change their mind within 3 days after the agreement is signed. If you and the district do not come to a resolution, you can proceed to the due process hearing. The impartial hearing officer must issue a decision within 45 days.

Also, make sure you are familiar with other options, including mediation and request for complaint investigation by the state.

Attached you will find a sample complaint form to a district that you can use as a guide. If you follow this guide, your complaint should be legally sufficient. If the district notifies you and the state within 15 days that they are challenging your complaint as legally insufficient, you should immediately contact the district in writing, with a copy to the state and to the hearing officer, to request specific deficiencies and be prepared to either demonstrate that your filing is not deficient or to amend your complaint to respond to the deficiencies cited by the district.

COMPLAINT

Date: _____

To: Superintendent, _____ School District
Address
Town, State Zip Code

Dear Dr./Mr./Ms. _____:

I am submitting this complaint on behalf of my son/daughter, (Name), who is ___ years old and in ___ grade at _____ School. I am concerned that:

____My child is not receiving a free, appropriate public education in the least restrictive environment.

____My child’s IEP is not being implemented.

____My right to participate in my child’s education is being violated.

____Other: Specify: _____

My specific concerns are as follows: (Provide a written summary of why you disagree with what is happening with your child’s education). Provide your concerns, any facts that you are aware of that support your concerns, and any other important information. See the example below:

My child’s IEP requires that she be provided with a one-on-one aide during math and science classes to help her focus and pay attention, and to read the more difficult material to her so that she can understand it. However, the aide has been absent for the past month on maternity leave, and no replacement aide has been hired, nor has anyone else filled in. Since the aide’s absence, my daughter has failed the last two science tests, after having passed the previous three tests with a 70% or better grade. This is a violation of my daughter’s right to have her IEP implemented consistently. I am attaching a copy of the teacher’s note to me explaining that the aide has not been in her class for the past month, as well as the tests taken with and without the aide’s presence.

In addition, I am concerned that the IEP does not provide my daughter with the needed supports to function as a member of the general education class. I have learned that my daughter is being educated at her own table, even though the general education students in the class are all at tables of 4 students. She is not part of any group, and she misses science at least once a week to receive speech therapy. This is a violation of my daughter’s right to be educated in the least restrictive environment with her non-disabled peers. I am attaching a copy of my daughter’s schedule, clearly showing that she misses science to receive speech therapy.

I have repeatedly asked for an IEP meeting, by telephone and in writing, to discuss this issue, but the principal says that he doesn't have time to meet with me now and I'll have to wait until after the state tests are over. He hasn't responded to my written requests, even though they were made over a month ago. I have attached copies of my letters as well as my telephone log showing the dates of my calls to the principal about this issue. This is a violation of my rights to be an equal partner with the school in decision-making about my child, to have an IEP meeting to discuss needed changes to my child's IEP, and to receive written responses to my requests.

I am requesting the following:

1. Immediate hiring of an aide to replace the aide on maternity leave, as well as a month of after-school one-on-one tutoring to help my daughter catch up with her classmates. I expect both of these corrective actions to occur within two weeks of your receipt of my letter.
2. A change in the scheduling of speech therapy for my daughter, so that she doesn't miss science or any core curriculum subject to receive speech therapy.
3. Immediately moving my daughter to a table with non-disabled peers.
4. An immediate response to my request for an IEP meeting to discuss my concerns. I expect the meeting to be scheduled within the next two weeks, unless these issues can all be addressed at the resolution session.

Since you have not provided any prior written notice to me about these issues, I will expect to receive the following before the resolution session:

- An explanation of why you proposed or refused to take the action raised in my complaint;
- A description of other options the IEP team considered and why those options were rejected;
- A description of each evaluation procedures, assessment, record or report you used as the basis for the proposed or refused action; and
- A description of the factors that are relevant to your proposal or refusal.

I am aware that we must meet to try to resolve the problem, and that you must convene the meeting with me and relevant members of the IEP team within 15 days of when you receive my due process complaint, unless we agree in writing to waive the session or agree to mediation. You then have no more than 30 days from the time the complaint is filed to resolve the complaint to my satisfaction, after which a due process hearing can occur. I am not planning to bring an attorney to the resolution session, so I do not expect you to bring the district's attorney. Please ensure, however, that there is someone at the resolution session who has the authority to reach agreement with me on my concerns. If you wish to discuss this matter with me, or to schedule the resolution session at a mutually convenient time and place, please contact me at (____)(Home phone), (____)(Work phone), or (____)(Cell phone). I look forward to hearing from you soon.

Yours truly,

Cc: State Department of Education
Director of Special Services
Case Manager/IEP team leader