

FRANCZEK RADELET
ATTORNEYS & COUNSELORS

300 SOUTH WACKER DRIVE, SUITE 3400 | CHICAGO, IL 60606
T: 312.986.0300 | F: 312.986.9192 | WWW.FRANCZEK.COM

*Choose Your Own Adventure:
Options and Avenues When Parents File for Due Process*

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1. Parent Perspective v. District Perspective

- a. Communication**
 - i. Keep channels of communication open.
 - ii. Disputes often arise when parents feel as if their voices aren't being heard.
- b. Power**
 - i. A power struggle between parents and school district staff members can lead to disputes.
 - ii. Home v. School
- c. Confusion**
 - i. Acronyms and specialized terms in special education are confusing.
 - ii. Misunderstanding about what actually happens at school.
- d. Trust**
 - i. Disputes often arise when there is a breakdown in trust.
 - ii. If a mistake is made, admit the mistake to parents and provide a solution.
 - iii. Develop relationships with parents so when issues arise, parents trust the district to resolve issues.
- e. Disagreement Over Programming**
 - i. If any of the above factors are at play, they can influence disputes over programming.
 - ii. Data must support decisions and can assist with dispute.

2. Parental Rights and Pre-Complaint Options

a. Procedural Safeguards

- i. Provide procedural safeguards at of every meeting.
- ii. Assist parents in understanding their rights.

b. Facilitated IEP Meeting

- i. A third party facilitator comes to the IEP table to assist the team in reaching an agreement.
- ii. ISBE has facilitators.
- iii. The focus is on the child and maintaining a positive relationship.
- iv. Either party can request a facilitator but both parties have to agree to participate.

c. Mediation

- i. Parents and the district can agree to mediation prior to parents filing a complaint.
- ii. Invokes stay-put.

3. After the Complaint is Filed....

a. Timelines

- i. Parents can invoke stay-put if they file a due process complaint within 10 school days after the IEP meeting is held.
- ii. The due process request must be filed with the state within 5 days after receipt of the request.
- iii. The District must provide a response to the due process complaint within 10 days receipt of the request.
- iv. A resolution session or agreement to mediate must occur within 15 days of the date of filing.
- v. Hearing and a decision must be complete within 45 days of the end of the 30 day resolution period.
- vi. Continuances and delays are likely.

b. Case Assessment

- i. Interview staff who work with the student.
- ii. Review student records and prepare a summary.
- iii. Prepare list of strengths and weaknesses of your case.
- iv. This process will help determine which areas you are and are not willing to budge on for purposes of negotiation at a resolution session or mediation.

4. Early Resolution

a. Resolution Session

- i. Meeting between parents and school districts; like an IEP meeting.
- ii. Required by IDEA (unless you mediate or both parties agree to waive it).
- iii. No third party present.
- iv. If the parent refuses to participate, the school district can move to dismiss the complaint.
- v. An agreement will be signed by both parties and is enforceable in court.
- vi. The agreement can be revoked within 3 days.

b. Mediation

- i. Dispute resolution process with a third party mediator.
- ii. Voluntary. You can mediate in lieu of holding a resolution session. If parents do not agree to mediation, default to resolution session.
- iii. All discussions are confidential.
- iv. If you reach an agreement, it is signed by both parties and enforceable in court.
- v. Mediators are appointed by ISBE.

c. Mediation v. Resolution Session

- i. Because a resolution session does not involve a third party, it may be a better choice to preserve the relationship.
- ii. School districts may only bring an attorney to the resolution session if the parents are bringing an attorney. The same is not true of mediation.
- iii. Conversations at a resolution sessions are not confidential, whereas conversations at mediation are.
- iv. Mediation is helpful if the parties have reached an impasse at the IEP table and need a third party to help navigate the issues and identify creative solutions.

d. Participants

- i. Parents can request that particular team members be present.
- ii. When choosing the school district team, focus on people who know the student and can speak to the hearing issues.

e. Communication at the Mediation/Resolution Session

- i. Focus on student needs.
- ii. Maintain positivity.
- iii. Recognize that negotiation requires a give and take.
- iv. Be objective.

f. Considering an Agreement

- i. Can you and the team live with it?
- ii. Does it resolve the dispute?
- iii. What is the likely outcome of a hearing?
- iv. What will likely happen between now and a hearing decision?

5. Hearing

a. Preparation

- i. Documents
- ii. Witness preparation
- iii. Disclosures

b. Hearing

- i. Can be many days in length.
- ii. Hearing officer is appointed by ISBE.
- iii. Court reporter provided by the district.
- iv. Hearing officer hears evidence from both sides, like an informal trial.
- v. Hearing officer renders a decision at the end of the hearing.

6. After Hearing...

a. Appeals

- i. Either side can appeal the decision within 120 days to federal court.
- ii. Parents can get attorneys' fees if they are the prevailing party.

b. Staff Care

- i. Despite our best efforts, hearings can be traumatic and personal for staff members.
- ii. Learning opportunities.