

APPENDIX C

# Navigating the Rough Waters

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What to Do When You Disagree with the  
School District's Decisions

## Education: Navigating the Rough Waters

*The IEP being written was not addressing my son's needs. The principal stated that the team only had until 3:00 to finish the IEP, which was one hour from the start of the meeting. Frustration was building, and voices started to rise. I started crying while trying to explain why the services presently being given to my son were not working. People took it personally, and disagreements began. The principal closed the meeting with the IEP left unwritten. All I could think on my way home was that I had had it with the school and that my son would never receive an IEP that would teach him the skills he needed.*

### ***When You Disagree with the School District's Decisions***

The Individuals with Disabilities Education Act (IDEA) values the input of parents regarding their child's education program. It provides for actions parents can take when they disagree with school district personnel about their child's educational program. These are options parents have:

1. **Request a case conference** – this is a meeting with school personnel to discuss concerns and explore how to resolve the issues.
2. **Request an administrative review** – this is a meeting that will include the district superintendent or designee to review the issues of disagreement. This person is able to reverse the decision of school personnel.
3. **Request mediation** – this occurs when parents and schools cannot agree after both the case conference and administrative review. You and the school must both agree to mediation. A trained, qualified and impartial representative hired by the Ohio Department of Education will be assigned to conduct the mediation between you and the school district representatives. The school district will take responsibility for scheduling a mediation time that you, the mediator, and the school district representatives agree upon.
4. **File for an impartial due process hearing** – this is a formal, administrative procedure that is held to resolve disagreements between the parents and the school district. The district will contact the Ohio Department of Education and a list of potential impartial hearing officers will be sent to the district. In Ohio, all hearing officers must be attorneys and all hearing officers must have completed training on the process through the Ohio Department of Education. Parents and the school have to agree upon a hearing officer to hear the case.

## **Complaint Process**

Parents may also file an official complaint with the Ohio Department of Education. This is an official notice that a school district may have violated one or more of the federal or state special education laws. Complaints must be about students, or groups of students who are eligible or thought-to-be eligible for special education services.

This does not require a hearing officer. The complaint is reviewed by staff of the Ohio Department of Education who investigates the complaint by talking with both the parent and the school districts to establish the facts of the case. An official decision is made regarding the complaint and the parent and the school district are informed in writing of the decision of the Ohio Department of Education. If the district is found in violation of federal or state law, the district is required to correct the violation.

Complaints must be made in writing and sent to the Ohio Department of Education, Office for Exceptional Children, 25 S. Front Street, Columbus, OH 43215.

## **Types of Disagreements**

### ***School district denies the request to perform a Multi-Factored Evaluation (MFE)***

In order for a child to be eligible parents' special education services, the child must meet two conditions. The child must:

1. Have a disability under one of the 13 IDEA categories, and
2. The disability must have a documented adverse affect on the child's educational program

If the school does not observe an adverse affect on the child's educational performance based upon educational data, the school may refuse to perform an MFE when parents request one.

If the school district refuses to perform an MFE, it must provide the parents with a *prior written notice* letter. The letter must contain information regarding why the evaluation will not be provided and what documentation was used to determine that an evaluation is not needed.

In response the parents may do one of the following:

- Request a mediation with an Ohio Department of Education-appointed mediator to review the issues of disagreement and make a decision, or
- File a complaint with the Department of Education, Office for Exceptional Children

### ***School district determines that the child is not eligible for special education services after the MFE is performed***

If this happens, parents can refuse to agree with the results of the MFE and request an *independent educational evaluation* at public expense. A request for an independent evaluation should be made in writing.

The district can agree to provide for an independent educational evaluation and provide parents with a list of approved evaluators that parents can use at the school's expense. Parents may choose an evaluator from the list or choose someone else.

For a publicly funded evaluation, the school must agree to the evaluator that the parent chooses. IDEA requires that the school agree to the location of the evaluation and the qualifications of the examiner (they must be the same as the criteria for evaluators that the district uses (such as a licensed psychologist).

The school district can initiate a due process hearing to show that its first evaluation is appropriate and, therefore, deny the independent educational evaluation. In this case, a hearing is scheduled before a hearing officer while the school presents evidence to support its position and the parents do the same. The hearing officer then decides if the school must provide for an independent educational evaluation.

Any time a district refuses the independent evaluation at the school's expense, parents have the option of obtaining an independent evaluation at their own expense. When the parents receive the results of any independent educational evaluation, they must request a case conference in writing with school district personnel to consider (and discuss) the results of the evaluation. At this meeting, parents are requesting school district personnel to review any decisions related to the child's eligibility or educational programming based on the new information provided.

### ***If parents and the school district disagree after a review of the independent evaluation results***

If you and the district cannot come to an agreement about how to address your child's needs, parents can file for an impartial due process hearing, as described above.

### ***The IEP is not appropriate or is not being implemented appropriately***

If this is the case, request in writing a review of your child's Individual Educational Program with the team and identify your concerns. At this meeting the team can address your concerns and make revisions to the IEP, if appropriate, or identify additional areas of assessment and programming needed to address your concerns.

If you can't come to agreement about your concerns, refer to the parent's options sections above. For more information, you can also refer to the booklet provided to you by the school district about parents' rights called *Whose IDEA Is This?* IDEA requires that all schools provide parents of children with disabilities with information about their rights. *Whose IDEA Is This?* describes

parents' rights in detail and lists the procedural safeguards afforded to you as a parent under IDEA.

In addition, IDEA funds parent training and information centers in every state and territory specifically to answer parents' questions about special education issues and provide training to give parents the information they need to advocate for their child's educational interests. In Ohio, parents can call the Ohio Coalition for the Education of Children with Disabilities at (800) 374-2806.

## **Section 504**

If you do not want to pursue a due process hearing to challenge the school district's decision about your child's eligibility for special education services, another mechanism is available to obtain accommodations for your child. When a child has an identified disability that does not meet the criteria under one of the 13 IDEA categories, or that does not adversely affect the child's educational performance, parents can request that the district provide the child with a 504 Plan. This may be the case for children with Asperger Syndrome.

Section 504 of the Rehabilitation Act is a broad civil rights statute that prohibits discrimination on the basis of disability. It states that no person with a disability can be, by reason of his or her disability, denied access to or excluded from participation in or denied the benefits of a public program or service.

Upon request, a 504 Plan is developed to provide the accommodations necessary for the individual with a disability to access an identified service or program. Each local district is required to identify procedures to implement the requirements of Section 504. A district is also required to identify individual(s) responsible for the coordination of Section 504 services. Ask for information regarding your district's procedures for compliance with Section 504.

## **Importance of Knowing Your Educational Rights**

It is important to approach the educational planning for your child with the school team from a positive perspective. Be open to ideas and solutions as long as they meet your child's needs. Still, understand that you have the right under IDEA to question the school district's decisions and that there are procedural safeguards written into the law to help you protect your child's right to a free and appropriate public education.

Several resources are available to help parents understand their rights regarding the education of their child. The Ohio Coalition for the Education of Children with Disabilities (see contact information below), the Autism Society of Ohio (see contact information below), and other local autism groups provide parent trainings on educational rights on a regular basis. These groups also offer assistance to families by phone and through their websites. There are many websites available that also provide information for parents on advocating for their child's educational rights.

(Information adapted from materials developed by the Ohio Coalition for the Education of Children with Disabilities, Marion, OH. Used with permission).

### Resources

Autism Society of Ohio, (614) 487-4726: [www.autismohio.org](http://www.autismohio.org)

National Center for Learning Disabilities: [www.nclld.org/](http://www.nclld.org/)

Center for Parent Information and Resources (CPIR): <http://www.parentcenterhub.org>

Ohio Coalition for the Education of Children with Disabilities, (800) 374.2806; [www.ocecd.org](http://www.ocecd.org)

Wright, P., & Wright, P. (n.d.). From emotions to advocacy – The special education survival guide. Hatfield, VA: Harbor House Law Press, Inc. (Available from [www.wrightslaw.com](http://www.wrightslaw.com))

Wrights Law Special Education Law and Advocacy: [www.wrightslaw.com](http://www.wrightslaw.com)