

RIGHTS OF MASSACHUSETTS YOUTH REGARDING SPECIAL EDUCATION DISPUTES

**Prepared by the Mental Health Legal Advisors Committee
June 2012**

How can parents and schools resolve disputes regarding anything other than IEP and special education services?

Several avenues exist for parents to resolve disputes with school districts regarding disabled students, such as bringing the dispute to the attention of the local public school officials, using the DESE Problem Resolution System, or asking that a neutral mediator be appointed.

Resources:

DESE, "How Can Parents and Schools Resolve Disputes?" in Parent's Notice of Procedural Safeguards, <http://www.doe.mass.edu/sped/prb/>

What does the process of appeal of an IEP at BSEA look like?

Parents may request a due process hearing by filing a written request with the school district or other opposing party and the Bureau of Special Education Appeals (BSEA). A BSEA Due Process Hearing Request Form may be used.¹ The opposing party may challenge whether a complaint provides sufficient information within 15 days, after which BSEA has 5 days to decide if the complaint is sufficient. Parents filing the request may add more information if agreed upon by the opposing party or if given permission by the hearing officer.²

If there are no issues regarding sufficiency, BSEA must respond to the hearing request within 10 calendar days, and must work to resolve the disagreement within 30 days of the due process hearing itself. BSEA must set a hearing date, assign a hearing officer, and send detailed information about the hearing process and a list of attorneys and advocates who may provide help at little or no cost.³

What is a resolution meeting?

In addition, the school district must set up a resolution meeting within 15 calendar days of receiving the complaint.⁴ The resolution meeting may be waived if both parents and the school district both agree to either use the mediation process instead or use neither and proceed directly to the hearing.⁵ However, if the mediation process is not used parents must participate in the

¹ BSEA, Due Process Hearings, <http://www.doe.mass.edu/bsea/process.html>.

² DESE, *Parent's Notice of Procedural Safeguards* 8 (2009), <http://www.doe.mass.edu/sped/prb/pnps.pdf>.

³ *Id.*

⁴ 34 CFR 300.510.

⁵ 34 CFR 300.510.

resolution meeting, in addition to agreed upon members of the IEP Team and someone from the school district who can make decisions about the student's program.⁶

What is a settlement agreement?

Parents and the school district may sign a written settlement agreement, enforceable by state or federal court, resolving the dispute.⁷ This agreement is voidable within three business days of the time that the parties signed the agreement.⁸ The resolution process also may end when the 30 day resolution period is over or when the parties complete mediation.⁹ If the school district has not resolved the complaint to the satisfaction of the parent within 30 days, the due process hearing may go forward.¹⁰ However, if the parent does not participate in the resolution meeting (or participate in mediation in lieu of the meeting), then the hearing may not go forward until the meeting is held.¹¹

What happens at a due process hearing?

At a due process hearing, a neutral and impartial hearing officer will listen to both sides of the dispute, hear testimony, examine evidence, and make a decision.¹² Both parties have the right to do the following:

- Present evidence (through documents and the testimony of witnesses) to support its position;
- Cross-examine witnesses and submit rebuttal evidence;
- Present oral and written arguments;¹³
- See any evidence that will be used at least five business days before the hearing;
- Request that evidence that has not been seen to be left out of the hearing;
- Obtain a free record of the hearing findings of facts and decision by submitting a written request;
- Request that the hearing be open to the public;

⁶ 34 CFR 300.510; DESE, *Parent's Notice of Procedural Safeguards* 8 (2009), <http://www.doe.mass.edu/sped/prb/pnps.pdf>.

⁷ 34 CFR 300.510(d); DESE, *Parent's Notice of Procedural Safeguards* 8 (2009), <http://www.doe.mass.edu/sped/prb/pnps.pdf>.

⁸ 34 CFR 300.510(e); DESE, *Parent's Notice of Procedural Safeguards* 8 (2009), <http://www.doe.mass.edu/sped/prb/pnps.pdf>.

⁹ DESE, *Parent's Notice of Procedural Safeguards* 8 (2009), <http://www.doe.mass.edu/sped/prb/pnps.pdf>.

¹⁰ DESE, *Parent's Notice of Procedural Safeguards* 8 (2009), <http://www.doe.mass.edu/sped/prb/pnps.pdf>.

¹¹ BSEA, *Hearing Rules for Special Education Appeals*, Rule 1F, http://www.doe.mass.edu/bsea/forms/hearing_rules.pdf.

¹² DESE, *Parent's Notice of Procedural Safeguards* 7 (2009), <http://www.doe.mass.edu/sped/prb/pnps.pdf>.

¹³ BSEA, *Special Education Appeals: Due Process Hearings*, <http://www.doe.mass.edu/bsea/process.html?section=9>.

- Bring the student in question to the hearing;
- Be represented by a lawyer and/or advocate.¹⁴

What happens after the due process hearing?

The hearing officer must issue the decision within 45 days of the end of the resolution period, unless an extension has been granted. A hearing officer's decision is final; however, if either party disagrees with the decision they may appeal it to a state or federal court within 90 days.¹⁵

Resources:

BSEA Forms including Pro Se Guide and Reference Manual,
<http://www.doe.mass.edu/bsea/forms.html>

BSEA, Due Process Hearings, <http://www.doe.mass.edu/bsea/process.html>

How does BSEA mediation work?

Parents may also request to go through the BSEA **mediation** process when there is a disagreement over eligibility or any other special education matter. Mediation employs a neutral third party individual to help both parties resolve disputes and come to an agreement over a child's special education needs. The mediator does not decide how to resolve a dispute.¹⁶ Mediation is not the same as a pre-due process hearing resolution meeting. Parents may choose mediation in place of, or in addition to the resolution meeting. They may also choose to undergo the mediation process even if a due process hearing is not requested or scheduled.¹⁷

Resources:

BSEA, Mediation, <http://www.doe.mass.edu/bsea/mediation.html>

BSEA, Special Education Mediation: Is it the Right Process for Resolving Your Dispute?,
http://www.doe.mass.edu/bsea/forms/m_brochure.doc

¹⁴ DESE, *Parent's Notice of Procedural Safeguards* 8 (2009),
<http://www.doe.mass.edu/sped/prb/pnps.pdf>.

¹⁵ DESE, *Parent's Notice of Procedural Safeguards* 9 (2009),
<http://www.doe.mass.edu/sped/prb/pnps.pdf>.

¹⁶ BSEA, Mediation, <http://www.doe.mass.edu/bsea/mediation.html>.

¹⁷ BSEA, Mediation FAQs, #4,
<http://www.doe.mass.edu/bsea/mediation.html?section=faq&faq=4>.

What are the main differences between mediation and a resolution meeting?

There are several notable differences between mediation and a resolution meeting. Parents who have filed for a due process hearing should consider the benefits of each process and make a decision to pursue one or both of the processes.

- Mediation is conducted by a neutral, third party individual, whereas a school staff person convenes a resolution meeting.
- Attorneys may participate in the mediation process, whereas school attorneys may only participate in a resolution meeting if the other party's attorney is present.
- An agreement signed as a result of the mediation process is immediately binding, whereas parties may rescind a signed agreement resulting from a resolution meeting within three business days.
- Mediation discussions may include a broad range of educational issues, whereas parties in a resolution meeting may only discuss educational issues filed in the hearing request.
- Discussions in a mediation meeting are confidential, whereas confidentiality is not required in a resolution meeting.¹⁸

What is a facilitated IEP team meeting?

The parties involved in an IEP Team may agree to a facilitated IEP team meeting, in which a neutral third party attends to help the two sides communicate better, resolve disputes and remain focused on drafting an effective IEP.¹⁹

If this is the case, school districts parents may request a facilitator from BSEA. This voluntary process is not the same as mediation with BSEA, which is more extensive.²⁰ Furthermore, an IEP Team facilitator will not be the same person who serves as mediator in the mediation process.²¹

What is a settlement conference?

A settlement conference is another opportunity, provided by the BSEA, for parties to reach a settlement before going to hearing. All Settlement Conferences have the following four requirements:

- A Hearing Request has been filed.
- The Hearing Officer assigned agrees that a Settlement Conference would be useful.
- Both parties voluntarily agree to participate in the Settlement Conference.

¹⁸ Compare BSEA, Mediation, <http://www.doe.mass.edu/bsea/mediation.html> with 34 CFR 300.510.

¹⁹ BSEA, Facilitated IEP Team Meetings (March 1, 2010), <http://www.doe.mass.edu/bsea/fiep.html>.

²⁰ BSEA, Facilitated IEP Team Meetings (March 1, 2010), <http://www.doe.mass.edu/bsea/fiep.html>.

²¹ BSEA, Facilitated IEP Team Meetings (March 1, 2010), <http://www.doe.mass.edu/bsea/fiep.html>.

- Each party must be represented by a licensed attorney.²²

The BSEA Assistant Director (or, occasionally, a BSEA Hearing Officer) sits down with both parties, separately and together, to facilitate negotiation of a comprehensive settlement of the dispute in lieu of going to hearing. Settlement conferences are only available in cases where a Hearing Request has been filed and both parties are represented by attorneys.²³

What is Sped Ex?

SpedEx is a dispute resolution pilot project that will be available from the BSEA in certain cases after an IEP has been rejected or a hearing request has been filed. It is voluntary and expedient. It provides a jointly agreed-upon independent SpedEx consultant to review evidence and advise the parties on FAPE and LRE so they may resolve their dispute.

Resources:

BSEA, Sped Ex, <http://www.doe.mass.edu/sped/spedx/>

What does DESE's Program Quality Assurance Services do?

Program Quality Assurance Services (PQA) accepts complaints about school issues into its Problem Resolution System (PRS).

Any person may file an oral or written complaint using PRS, whereas only parents or school districts may file BSEA due process complaints. However, complaints through PRS cannot be investigated at the same time as a BSEA proceeding; as a result, it is best to pursue one avenue of complaint at a time. An individual who contacts PRS has the opportunity to informally resolve an issue with a school district's Educational Specialist, or proceed to formally filing a complaint (officially known as an Intake Information Form) with DESE. Once DESE receives a complaint, they usually contact the concerned individual within five business days.

PRS can only assist concerns that are related to an education law, regulation or policy. If it is determined that a complaint fits within this guideline, the Educational Specialist will contact the school and investigate the complaint. Usually, a report should be released within 15 calendar days of DESE's first contact with the school in question. The Educational Specialist will review the report and decide if further action is necessary to resolve the complaint. DESE should make a decision regarding any complaint within 60 calendar days of its receipt.

Resources:

DESE, Program Quality Assurance Services: Problem Resolution System, <http://www.doe.mass.edu/pqa/prs/>

²² BSEA, Reference Manual (Nov. 2009) at 30, http://www.doe.mass.edu/bsea/forms/proselitigant_manual.pdf.

²³ *Id.* at 9.

DESE, Parent's Notice of Procedural Safeguards, <http://www.doe.mass.edu/sped/prb/>

DESE, Complaint Chart, <http://www.doe.mass.edu/sped/complaintchart.doc>

SPEDWatch, How to File a Complaint, <http://www.spedwatch.org/files/Complaints.pdf>

What does the Office for Civil Rights of the federal Department of Education do?

The U.S. Department of Education's Office for Civil Rights (OCR) receives complaints of disability discrimination against any education institution that receives federal financial assistance.²⁴ OCR acts as a neutral fact-finder in the complaint process, and will not act as an advocate for individuals who file complaints. Complaints filed through OCR may be resolved by facilitated resolutions, investigations, or other methods.²⁵

Resources:

OCR, Questions and Answers on OCR's Complaint Process, <http://www.ed.gov/about/offices/list/ocr/qa-complaints.html>

OCR, OCR Electronic Complaint Form, <http://www.ed.gov/about/offices/list/ocr/complaintintro.html>

Is the Bureau of Special Education Appeals part of DESE?

No, while the Bureau of Special Education Appeals (BSEA) used to be part of the Massachusetts Department of Elementary and Secondary Education (DESE), they are now separate entities.²⁶

²⁴ U.S. Department of Education Office of Civil Rights, Overview of the Agency, <http://www.ed.gov/about/offices/list/ocr/aboutocr.html>.

²⁵ U.S. Department of Education Office of Civil Rights, Questions and Answers on OCR's Complaint Process, <http://www.ed.gov/about/offices/list/ocr/qa-complaints.html>.

²⁶ G.L. c. 71B, § 2A; BSEA, Special Education Appeals: Overview of the BSEA and its dispute resolution processes, <http://www.mass.gov/anf/hearings-and-appeals/bureau-of-special-education-appeals-bsea/>.