

Continued from “Helping Parents Understand Their Rights in Special Education”

What would you say to parents who ask, “should we go at this alone or do we need a lawyer when we are initiating a due process hearing?”

The law allows parents to initiate due process hearings on their own. If parents are unable to obtain either the help of a knowledgeable advocate or attorney, they may still request a due process hearing. However, they are likely to benefit from involving a knowledgeable advocate or an attorney who specializes in special education law.

The benefits of having a knowledgeable person involved in determining whether due process is appropriate and in writing the due process request. The IDEA 2004 amendments allow schools to file a motion to dismiss a due process request that is not completed appropriately. So if parents do not understand how to develop a due process hearing request, the request may be dismissed. Unfortunately, the law makes it harder for parents to proceed to due process without professional assistance.

How can parents get counseling as a related service under IDEA in their child’s IEP?

For a student with an IEP or Section 504 plan, schools must provide related services that are necessary for the student to benefit from his or her education or to make progress in functioning in school. The IDEA 2004 amendments clarified that schools must address academic, developmental, and functional progress. Consequently, a student with emotional, organizational, behavioral, and social deficits and an IEP or 504 plan is entitled to a range of interventions that help with academic and functional progress. These include services to address emotional challenges, social skills development, anger management, self advocacy, and other services.

Parents can show the need for these services through a professional evaluation, either conducted by the school assessment team or private evaluators, and a review of the student’s functioning in school. The review of the student’s functioning in school should include school records, observations of the student, an interview with the parents, and input from the school staff. There are a wide range of behaviors that might lead a student to require counseling in school, including disruptive or aggressive non-compliant behavior, depression, social isolation, school phobia, problems with executive functioning, or difficulty with organizational skills.

How can parents eliminate the use of aversives, restraint and seclusion in schools?

This can be addressed by defining in students’ IEPs what constitutes appropriate interventions, including positive interventions and supports. The IEP or 504 plan can also include the interventions that should be avoided including aversives, restraint, and seclusion. However, parents should be aware that many schools are reluctant to explicitly exclude particular interventions from the plan.

Parents should also be aware of state regulations that either limit or prohibit the use of aversives, restraint, and seclusion. Even if these issues are covered by state law or regulations, the school may not know about these rules or may be ignoring them, making it important for parents to understand whether the laws or regulations prohibit them.

What are tips to help parents advocate for services for their child who is not an “obvious” candidate for a 504 plan or an IEP?

The key in triggering evaluations for program eligibility is documentation that a student has a disability that is related to a diagnosed illness and that has an adverse affect on his or her ability to function in school.

Many students have disabilities that are not obvious. A student may be depressed, socially isolated, have severe anxiety, or be experiencing other challenges that are not obvious in the classroom. In those cases, parents should keep records to show how that behavior is impacting the student's ability to learn and function in school. They may want to keep a log of the number of days that their child comes home in tears or refuses to go to school. They may want to keep a log of the infrequency of social contacts for their child or comments their child makes at home about school, which reflect his or her severe distress.

Parents should talk with mental health professionals and have their child evaluated to establish that the issues impacting their child are serious and affect functioning at school. Parents may also seek a copy of their child's school record, which may include notes or reports that confirm that their child is struggling. It is also useful for mental health professionals to have parents and teachers complete behavioral rating scales or psychological rating scales that may show that the student is experiencing symptoms or distress.

What is available to ensure that the development and implementation of an IEP or 504 plan is done in partnership with the student?

IDEA and Section 504 both convey the idea that the planning process should be a partnership between the parents, the student, and the school. The partnership that is called for in both IDEA and Section 504 is not a full partnership. It does not give parents veto power; it just allows them to express objections to proposed services and accommodations and to request a due process hearing.

A student has the right to be invited to the IEP meeting when he or she is 16 years old, and sometimes younger depending on the state. But until the student is 18 years old, the decision of whether he or she will attend the IEP meeting rests with the parents. If the parents decide that their child should not attend the IEP meeting, once the child is 16 years old or older, the school must seek the student's input in some way.

It is generally helpful for students to become informed about and participate in the IEP process. This gives students a better understanding of the process, a better understanding of their disability, and the rationale for proposed services. It also allows students to develop self advocacy skills, which will serve them well into adulthood.

Can services ever be refused by a student if they are in the IEP?

A student may refuse an IEP if he or she is 18 years or older and legal guardianship has not been transferred to the parents, or the student and the parents agree, before the student is made eligible for special education, that they do not want special education services. If the parents refuse special education services before the student is eligible, the school may not impose special education services over the refusal of the parents, and the student would not have the authority to independently authorize special education services, unless the student is 18 years or older. But if there is an IEP that has been agreed upon, the student does not have the right to pick and choose the IEP services he or she wants. If the student is 18 years or older, and the school proposes an unwanted IEP service, the student may request a due process hearing to challenge the need for the service. The bottom line is unless a student is 18 years or older, he or she does not have the right to accept or reject special education services.

What rights do parents and their child have to ensure humane treatment?

IDEA does not explicitly address humane treatment. It requires special education services to be appropriate. Parents, and in some cases students, may proceed with a complaint about services either through the due process procedure or by filing a complaint with the State Department of Education. They may also file a complaint under Section 504, if the student or the parents believe that they are being subjected to discrimination, harassment, retaliation, or unfair treatment. A Section 504 complaint can be filed either through a request for a due process hearing or by filing a complaint with the U.S. Department of Education Office of Civil Rights. The U.S. Department of Education Office of Civil Rights' complaint form can be accessed at www.ed.gov/ocr (click on *Know Your Rights*).

Beyond IDEA and Section 504, many states have human rights laws and agencies that investigate complaints of human rights violations. If a student or parent believes that they are not receiving humane treatment, they may be able to file a complaint with the state agency responsible for enforcing those laws.