

## **HELP! The school and I don't agree on my child's IEP.**

Disability Rights of West Virginia (DRWV) often receives calls from parents stating that they have requested something from the school district during an Individualized Education Program (IEP) meeting and the school district will not provide it. These requests are for things like evaluations, assistive technology, services such as physical/occupational or speech/language therapy (PT/OT/SLT) or for an accommodation to be listed on the student's IEP. When school districts won't do what the parents have requested, parents often make the mistake of "going to the board of education" to complain. Board of education members are NOT part of a student's IEP team, nor can they make IEP decisions outside of the IEP process. Remember, IEP development is a process and the process must be followed!

Listed below are the steps you should follow when trying to obtain services needed by a student:

**1-**Make all requests during an IEP meeting in writing! This starts the timelines for the school to respond by agreeing with your request, getting a consent form signed by you, or disagreeing with your request and providing notice of their disagreement.

Questions to keep in mind when making a request are:

- Why are you making the request?
- Do you have documentation from a professional recommending what you are asking the school district to provide?

**2-**Some requests may require an evaluation first. You will need to provide a doctor's prescription requesting an evaluation for a related service such as the PT/OT/SLT. The evaluation will then determine if the student has an educationally based need for the related service. A written request for an assistive technology evaluation should be made if the student needs a device or software to benefit from or have access to their education. There are evaluations for other services. Be sure to keep a copy of the doctor's prescription and/or the letter requesting an evaluation.

Once a parent makes a request for an evaluation, the school district must obtain the parents' signed consent. Most likely the school district will want to use their form; however, the letter from the parent should serve as written consent for the evaluation. After the school district has obtained signed consent, they have eighty (80) calendar days to perform the evaluation. If the IEP team is requesting the evaluation the school district has sixty (60) calendar days to perform the evaluation.

**3-** If the school district refuses to do the evaluation or provide other services you have requested, they must provide you with prior written notice (PWN) within five (5) calendar days explaining why they are refusing your request. PWN must contain what was requested, why it is being refused, what other options were considered, and why those were determined inappropriate.

Remember, you probably will be working with the school district for several years. It is important to build a good working relationship with the school IEP team members. Because someone from the school district is telling you “no” for something you requested at an IEP meeting, does not mean that they personally disagree with you. They may agree with you, but are being told to say “no” by their supervisors. Be professional. If you are being told “no” for one or more of your requests, request prior written notice for each issue and move on through the IEP development. Don’t let the “no” hold up the rest of the IEP development. There are most likely many other issues the team agrees on.

**4-** If the county’s Special Education Director attended the IEP meeting at which you made your request, once you have received your PWN, you can then file a state complaint regarding what you requested and the school refused.

If the Special Education Director did not attend the IEP meeting in which you made a request, you should write a letter to the Special Education Director. In the letter, explain what you requested and why. You can discuss what the other IEP team members had to say about your request. Finally, ask the Special Education Director to look into the matter and to respond to your letter in writing within ten (10) calendar days. Send the letter by certified mail with a return receipt. The letter allows time for the Special Education Director to investigate the issue(s). The Special Education Director may then instruct the IEP team to meet again with instruction given to the chairperson of the meeting on how to resolve the issue(s) in question. If the Special Education Director does not offer assistance to the IEP team on how to resolve the issue(s), the next step for the parent would be to file a state complaint with the West Virginia Department of Education (WVDE).

**5-** Parents are often very nervous about filing a state complaint. Don’t be! The role of the WVDE is to investigate matters such as this one. They are to determine if a county has followed the WVDE’s policies and procedures called WV Policy 2419. If a county is not following the policies, the WVDE will require they do so. The WVDE may also require the county to provide staff training or develop a needed procedure for something. They may determine the student is owed compensatory educational services (make up services for something the county failed to do). If the WVDE has received several complaints in the same county for similar issues, they may see that they need to provide training in that county. A state complaint can serve many beneficial purposes.

**6-**Another option available to parents and educators in resolving disagreements about a student's IEP, is the Mediation Process. It is a voluntary process. Both parties must be willing to compromise in order to come to an agreement about what is the best way to meet the student's needs. If both parties are not willing to give and take a little, Mediation will not help. Mediation can take place any time, even if there has been a state complaint or due process filed. An agreement reached during Mediation is enforceable in state and federal courts.

**7-A** Due Process Hearing request can be filed to resolve disputes between parents and school districts. A hearing officer makes a decision which determines whether the law has been violated and what will be done to resolve issues. A Due Process Hearing is very much like a court proceeding. The school district will have an attorney to represent them. DRWV suggests that if a parent wishes to obtain legal representation for a due process hearing, to do so before filing for a due process hearing. The timeline of events run very quickly in a due process and an attorney will need time to prepare your case. It is wise not to threaten to sue the school district every time you go to an IEP meeting. Keep in mind that it is very difficult to find attorneys who will take a special education case.

DRWV does provide representation for a student at a due process hearing when our resources allow. However, because you say you want to file a due process, does not mean that you are ready for a due process. The DRWV attorney or a privately hired attorney will want to see that you have taken steps to document the issues for which you want to go to due process. That is why it is very important to write letters to document problems and conversations, make requests in writing, have recommendations from professionals and file state complaints. Documentation is needed to prove your case.



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