



If you and the school disagree about your child in special education

You have to give your OK for the school to do some things. Most of the time you and the school will probably agree. But what if you disagree about something? **You have a right to disagree with the school.** The law has ways to decide who is right. These are called your **due process rights**. But you should still try to find a way to agree.

The first thing you should do is talk to the person you disagree with. Set up a time to meet or talk on the phone. It is very important for you to be calm. **Don't yell and don't curse at the person.** Make a list ahead of time of what you want to say or ask. This can help so you don't forget what you want to say. What if you still can't agree? Then ask for an IEP meeting.

IEP meetings

You have a right to have an IEP meeting anytime.

The school must have the meeting within 10 days if you ask for it in writing. This gives you a chance to talk to the school. Maybe you can find a way to agree. **Stay calm and don't yell or curse at the meeting.** Don't walk out of the meeting. The meeting can go on even if you leave. If it helps, take a friend or someone who knows about special education with you. What if you still disagree after the meeting? Then the IDEA law gives you other ways to decide who is right.



The IEP Team must agree on what goes in the IEP. Most of the time this will be easy. What if you **don't agree** with the IEP? You have 3 choices:

1. **OK part of the IEP.** This lets the school do the parts you OK'd. Agree to as much as you can so your child can get help right away. Put your initials on the IEP by any parts you OK. At the end of the meeting, they will give you a paper. It is called a **Prior Written Notice**. Make sure the paper shows what you OK'd. Remember, you can change your mind and take back your OK. What about the parts you don't agree on? Ask for another IEP meeting. The IEP Team will have to meet again. **OR** you can ask for mediation or a hearing.

What if the school says you must OK all of the IEP or refuse it all? Each goal has the date for the school to start it. You can approve the parts you agree on and let them start right away. Ask them to take out all the things you disagree with. Then ask to set another IEP meeting to talk about those things. What if the school won't take out the parts you disagree with? Then don't sign the IEP.

Important! There are 2 places you sign to OK an IEP. One is a page that everybody signs. It says that you came to the meeting and helped write the IEP. Sign this paper. The second paper is very important. It asks you if you are the parent or guardian. It asks if you agree with the IEP. If you agree, put a check mark under "agree". If you don't agree, check "disagree" **OR** you can refuse to sign the paper at all.



2. **Disagree with all of the IEP.** This means the school **can't** do the things in the IEP. What if your child has an old IEP? The school can keep using the old one until it is changed. This is because the law says the school must have an IEP for your child. If you ask, the school has to have another IEP meeting within 10 school days. **OR** you can ask for mediation or a hearing.

In Tennessee, if you don't sign the IEP, the school can use it anyway. **BUT** they must tell you in writing that they are starting the IEP. **AND** they must wait 14 days before they start using the IEP. They won't meet again before they start using the IEP. If you **don't** want the IEP used, the 14 days gives you time to ask for a due process hearing.



Sign the page that says you came to meeting. **BUT** mark that you disagree with the IEP. Write that you **don't** give your OK for them to use the IEP.

3. **Refuse to sign the IEP.** In most states this means the school can't do the things in the IEP. If you don't sign the IEP, the school can use it anyway. But they must tell you in writing that they are starting the IEP. **AND** they must wait 14 days before they start using the IEP.

Why does the school have to wait 14 days? This gives you time to stop them. You do this by filling out a paper that says you disagree. This is called **asking for a due process hearing**.

There are different rules for the very first IEP meeting. If this is your child's first IEP, the school **CAN'T** use the IEP unless you give your OK. The school **CAN'T** give your child services for the first time unless you agree. If your child is 3 or 4 years old, the school can't make you send your child to school. But it is a good idea to get your child the help he or she needs as soon as you can.

What happens if you don't ask for a hearing during the 14 days? This is the same as saying yes. The school can start using the IEP even if you didn't sign it.

How do you settle it if more IEP meetings don't help?

The IDEA law gives you several ways:

1. Independent Educational Evaluation

Do you disagree about what your child's disability is? Or what kinds of help your child needs? Then you can ask for an independent educational evaluation or IEE. Someone who doesn't work for the school does the testing. You must follow the rules about who can do these kinds of tests. Ask the school for the rules. Ask the school in writing to pay for the testing. To find out more, see our brochure "Is your child having trouble in school?"



2. Mediation

You can ask for someone to work with you and the school. This is called **mediation**. You and the school must both agree to do this. **Both you and the school have a right to agree to mediation or refuse it.**

Any time you ask for a hearing, the school must ask if you want mediation. You can choose it or not. But you can't get mediation unless the school wants it too. You can also ask for mediation even if you don't ask for a hearing. You don't have to have a lawyer for mediation.

The person in charge of mediation is called a mediator. This is someone who has been trained in how to do it. The mediator can't work for any school district.

This person listens to you and the school. He or she helps find things you can agree on and writes it down. If you agree, you and the school sign the paper when it is done. This is a legal

paper that the school and you **must** follow. Make sure you understand what it says before you sign it.

Mediation is **free** for you and the school. The State pays the costs.



Everything talked about in mediation is a secret. What if there is a hearing or a lawsuit after the mediation? You can't use anything you found out in mediation. The school

can't either. You may be asked to sign a paper promising to keep the mediation talks secret. The school will have to sign the paper too.

3. Due Process Hearing

If you don't want mediation, you or the school can ask for a **due process hearing**. You can ask for mediation **AND** a hearing at the same time.

A hearing is for when you and the school disagree about:

- If your child gets special education
- **OR** your child's testing for disability
- **OR** your child's education
- **OR** the kind of class where your child learns (placement).

How to ask for a due process hearing

To ask for a hearing fill out a Parent's Due Process Hearing Request. The school can give you this paper. It is also in the back of the Parent Rights (Procedural Safeguards) booklet. They give you this booklet at IEP meetings. Fill out the paper and keep a copy. Mail it to the address on the paper.



How long do you have to ask for a hearing? If you don't want the school to use the new IEP, ask within 14 days. But you must ask within 2

years. The 2 years start when you and the school disagree. **OR** when you think the school broke the law. You might have longer if the school:

- Told you the problem was fixed, but it wasn't
- **OR** didn't tell you things IDEA law says they should tell you.

The school must also tell you:

- That you can ask for mediation
- About any free or low-cost legal help you can get
- About any other help you can get

Within 10 days of getting your letter asking for a hearing, the school must answer. It must explain why they did the thing you disagree with.

What if the school was the one who asked for a hearing? Then you will get a letter saying the school asked for a hearing. You must send them a letter within 10 days. It should say why you disagree with the school. Keep a copy of your letter.

If you ask for a hearing, the school must meet with you within 15 days. This is called a **resolution meeting**. It is a chance for you and the school to see if you can agree. Have you and the school agreed to have mediation? Or have you both agreed in writing to skip the resolution meeting? Then you don't have to have the resolution meeting. But never skip a resolution meeting that has been set up. If you do, the school will stop your due process hearing.

Who is at the meeting? You and any IEP Team member who knows the facts that led to the hearing. You and the school decide which IEP Team members



need to come. There must also be someone from the school who can make decisions. You don't have to have a lawyer. The school can't have a lawyer there unless you bring one.

If you can't agree within 30 days, you get a hearing. The 30 days starts on the day you asked for a hearing. It can take longer if you refuse to go to the meeting.

If you and the school agree at the meeting, it must be put in writing. Both you and the school must sign it. This is a legal paper that both of you **must** follow.

What if you or the school change your mind after the paper is signed? You have 3 business days to take your agreement back. A business day is Monday through Friday, not counting holidays.

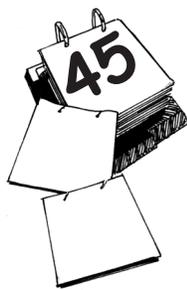
Is there always a resolution meeting? No. There is no meeting **IF**:

- You and the school agree in writing to skip the meeting **OR**
- You and the school agree to use mediation.

What if you refuse to go to the meeting? Then you don't get a hearing. What if the school refuses to go to the meeting? You may ask the judge to start the hearing.

The hearing has to be over in 45 days. The 45 days start the day after:

- You and the school refuse in writing to go to the resolution meeting **OR**
- You and the school are in mediation or resolution. You both say in writing that you can never agree **OR**
- You and the school are in mediation or resolution. You both say in writing that you want to keep doing it. Later one of you stops it.



The judge in charge of the hearing is called a hearing officer. The judge must be a lawyer but can't work for the school. The State chooses the judge. But you can ask for a change in the judge.

What happens to your child during the hearing? Until it is over, the place where your child is learning stays the same. This is called **stay put**. What if you or the school want to move your child? Your child can only move if you and the school agree on a new placement. This is true unless the school has moved your child to a school for children who break the rules. Then your child stays in that school until the judge decides.

Don't keep your child out of school because you disagree about the IEP. You can get in trouble for truancy if you do.

What if you or the school have more tests done on your child? You must show them to each other at least 5 business days before the hearing. **Business days** are Monday through Friday. Saturday, Sunday and holidays don't count.



Is someone going to say your child needs something because of what the tests showed? Then you and the school must tell each other about this.

What if you or the school wait longer? It is up to the judge. You or the school may not get to use the information unless you both agree. It is best to show the papers to the school 5 days before the hearing.

Most of the time the school has a lawyer at the hearing. You can also take a lawyer to the hearing. Do you have to have a lawyer? No. You can take someone with you who knows about special education law. In Tennessee, an advocate can't act like a lawyer or do some things a lawyer can do in court. The school will have a lawyer.

Do you need an interpreter for the hearing? Be sure and tell the judge ahead of time.

You can keep other people out of the hearing. This is called having a **closed hearing**. Or you can let anyone come to the hearing. This is called having an **open hearing**.

You and the school have the right to show proof of what you say.

You have the right to bring witnesses. You have the right to question the school's witnesses. The school has the right to question your witnesses.



The judge will listen to both sides. The judge has 45 calendar days to decide the case. Calendar days count every day even Saturday, Sunday and holidays. If you or the school ask, it can be longer.

The judge has to write down the decision. This has to be done within 24 hours after he or she decides. You and the school get a copy. **You have the right to get the decision on tape for free if you ask.** You can get it in your native language if you ask.

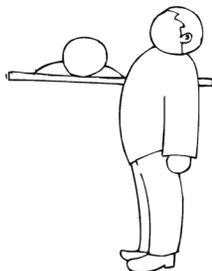
What happens if you win the due process? The school has to do what you were asking. What if you lose? The school gets to do what it wanted. If you don't like the decision, you can file a lawsuit. The school can do the same thing.

Did you have a lawyer for the due process? **If you win, you have the right to ask the school to pay your lawyer fees.** It is up to the judge how much the school pays. The judge can make the school pay all, some or none of your lawyer fees.

What if you lose? The judge may decide you didn't have a good reason to ask for a hearing. If so, the judge can make you pay for some of the school's lawyer fees.

4. Lawsuit

What if you lose the due process hearing? **You have the right to sue the school in state or federal court.** You should have a lawyer to file the lawsuit. A lawsuit can last months or even years before it is over.



The school must tell you where you can get free or low cost legal help.

What if you can't get free legal help? Sometimes the lawyer won't ask for money until the case is over. If you win, the school might have to pay your lawyer's fees. The judge decides how much will be paid.

What if you lose? You might have to pay the school's lawyer's fees. Be sure and ask your lawyer about the fees before you hire him or her. Going to court can be expensive.

What if you lose in court but still think the school is wrong? You can ask a higher court to look at the case. This is called an **appeal**.

5. Complaint

Anyone who thinks the school is not following the law can file a complaint. You can do this even if you don't have a child in the school.

You file a complaint by filling out a paper. You can ask the school for the paper. It is also in the back of the Parent Rights (Procedural Safeguards) booklet. They give you this booklet at IEP meetings. On the paper, it says where to send it after you fill it out. In the paper you must say:



- That you think the school is breaking the IDEA law **AND**
- **How you think the problem can be fixed AND**
- The facts that made you think they broke the IDEA law.

You have **1 year to send in the complaint** paper. After you send it in, the State Department of Education must check it out. They must do this in **60 days**. The 60 days start when they get the complaint paper. They must give you a chance to tell them anything else about the problem. They must send you a copy of what they decide about the complaint. It must explain how they decided.

What if you complain about something AND you also ask for a hearing? The State can only check out the things that are **NOT** in the hearing. The things in the hearing will be decided by the judge.

What if you file a hearing first and then do a formal complaint? The State can't change what the judge said. The State must write and tell you that the judge decides the case.

6. Private school

There is one more thing you can do if you disagree with the school. You have the right to put your child in a private school.



Sometimes you can make the public school pay for it. But you have to prove that you had to put your child in private school. You have to prove the school didn't give your child a **free appropriate public education (FAPE)**. FAPE means the education met your child's needs. You have to prove your child's needs were not met. Do you want the school to pay you back for the cost of private school? Here are the things you **MUST** do:

1. Tell the school what you don't like. Tell them you are putting your child in private school. There are two ways to do this. You can either tell them at the last IEP meeting before you put your child in private school. Or you can tell them in writing at least 10 business days before your child changes schools. **Business days** are Monday through Friday.
2. Did the school tell you they want to test your child? Then you should let them. The school must tell you in writing why they want to test your child. They must do this at least 10 days before you put your child in private school.

How much does the school have to pay you for the private school costs? A judge decides

how much. The judge can make the school pay some, all or none of the costs. This is true even if you do all the steps listed above.



What if the school won't help your child?

One of the places below may help you. Or connect you with someone who can help you.

- In Metro Nashville Public Schools? Call **The Arc of Davidson County - 615-321-5699, ext. 35**. They may be able to help in other counties.
- **Legal Aid Society - 1-800-238-1443**. They help in some counties.
- **Nashville Prevention Partnership - 615-297-7635**
- Metropolitan Nashville Public Defender's Office, Juvenile Division, **The Kids' Rights Program - 615-880-3710**

Ask for our other brochures:

- Who can get special education?
- What is an IEP?
- Writing an IEP
- Does your child get in trouble at school?
- Is your child having trouble in school?
- Can't get special education? A 504 Plan may help
- Your rights as the parent of a child in special education

NOTE: This information cannot take the place of advice from a lawyer. Each case is different and needs individual legal advice.

This project is funded under an agreement with the State of Tennessee, Department of Finance and Administration, Office of Criminal Justice Programs and is supported by Award #2099-SU-B9-0002 awarded by the Bureau of Justice Assistance, Office of Justice Programs, USDOJ. This brochure was a joint project of The Arc of Davidson County, The Kids' Rights Program, Legal Aid Society of Middle Tennessee and the Cumberland and the Nashville Prevention Partnership.

© 1998 - 2011 Possibilities, Inc. All rights reserved. Used with permission.