



Really Frustrated with Your Child's School? Ready to Call the Media?

A Primer on Complaint and Resolution Options and Effective Advocacy Strategies for Students
with Disabilities in Ohio

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As advocates and people with disabilities ourselves, we understand how frustrating and confusing advocating for your child can be. While we believe a good relationship with your child's school is always the ideal, it doesn't mean ever agreeing with whatever you are told without careful reading and asking questions. On the flipside, there may not be a lucrative lawsuit or special education directors escorted out of their offices on the nightly news as a result of your advocacy.

A note here about the emotional side of advocating for your child and supports. As parents, you should want the best for your child. Your child already got dealt a rough hand with a disability. Having to deal with school systems that seem to not to get it on top of that seems like icing on a cake you didn't order in the first place, right? Suddenly, you are faced with large meetings and varying opinions from professionals on your child, or worse yet, your parenting. Even on the parent support side of the equation, it can be a jungle. There is a ton of conflicting advice on the Internet and on the park bench as to whether you should kill schools with kindness by bringing cookies and pictures of your child to meetings, or go in like a warrior prepared to do battle. There are very strong opinions about what sort of school setting is best, and what level of inclusion is appropriate. (For discussion of inclusion from a person with disability's perspective, see our paper *Creating a Less Restrictive Environment* under Resources at www.brighthorizonsadvcon.com). Additionally, there are also many opinions on whether you should bring friends, mentors, advocates, or attorneys to meetings with you. The answer to all these questions entirely depends on your unique situation. There is not one right answer. Before you think "Great, what now?" this paper's goal is to help you figure out what is best for you and your child.

For starters, here is a quick list of the pros and cons of various supporters you may bring to a meeting.

- 1. Friends:** Bringing a friend of the family can be a fabulous moral support for you and bring another perspective on your child to the team. If however, the friend is angry and you are, do not think that two angry parents will get better attention. Angry displays tend to make schools put up walls.
If you bring a friend who is an educator, be aware that all states and Districts do things a bit differently within the confines of federal and state guidelines. Your friend's District may do things differently and as such, these friends can offer excellent suggestions. But whether that District is right and yours is wrong is not always clear cut, unless the educator you bring really can refer back to state guidelines when making assertions.
- 2. Mentors:** Mentors can be wonderful supports, being familiar with the District, and having walked in your shoes, so to speak, as they are parents of children with disabilities. If they are paid either by the District or by the Ohio Department of Education they may either feel limited in how much they can advocate, or tell you directly. Most are not allowed to assist with filing complaints.
- 3. Advocates and attorneys:** These are grouped together because in special education work, advocates and attorneys serve largely similar functions. Both can represent you in meetings and file any types of action discussed here. Be aware of the following:

- a. Most will charge fees, because there is not a state or federal program or private grant that picks up all such fees. There are free legal options available in Ohio and elsewhere, including Disability Rights Ohio, and various Legal Aid organizations. The limitation on these is that due to limited funding and staffing, they may only represent certain types of cases, which may not include your concern. Legal Aid organizations base eligibility for free services on income, and private attorneys usually do very limited amounts of free work, if any. Many times we hear that advocacy services should be free, because families have so many expenses, and no one should have to pay extra to make a school do the right thing. Morally, we may not disagree. That said, the truth is, advocacy fee decisions, just like any other service charges, aren't made on moral merit, but economics. What an advocate or attorney charges will be based on what they need to pay their bills, with as much consideration for your circumstances as they can have. Some advocates, like our firm, offer services based on income, or other discounts, based on the resources available. High profit is not often a motivator for advocates or individual attorneys, but there are economic considerations for any professional's time.
- b. If you have a family attorney, they may not understand special education law. Law, like medicine, is very specialized these days.
- c. When choosing an advocate or attorney, whether they are free or expensive or in between is only one piece of the puzzle, and cost doesn't always reflect quality. Looking for the right advocate or attorney for you involves weighing not only cost that works for you, but experience, and style. Do not be afraid to ask about personal life experiences with disability, knowledge of education, success rates with issue resolution, experience filing complaints, etc.
- d. Hiring an advocate or attorney should not be about scaring the school, although it does generally have the effect of letting schools know you should be taken seriously. Beyond the "be on notice" effect, the practical purpose is about getting good advice and muscle as needed to accomplish what your child needs. As one of our attorney colleagues notes, bringing in an attorney does up the ante. Bear in mind that Districts which know you are bringing an attorney (and yes, it is protocol to let a District know in advance, just like Districts should tell parents who is coming) may invite their attorney, thus taking things to a level you may not have needed to resolve your issue. Tensions may well increase and not decrease. Because of this, depending on the severity of the issue, you may want to consider using an advocate before an attorney, but again, this is entirely up to you. Be aware, however, just because someone is an advocate or an attorney, they may not go in initially with guns blazing. Good ones will assess the situation and advise you what approach they think will be best, and adjust it accordingly. They will also advise you whether you have a good issue to fight. Advocates may take cases that attorneys might not, because a situation may require moral support, assistance in communication, or consultative services, but not involve a violation of law. If an advocate or attorney thinks you don't have a valid issue, they will most likely be honest about it. But as with everything, don't hesitate to get a second opinion. If the second opinion is the same, you may want to reconsider pursuing the issue. Even so, most good advocates and attorneys may offer you alternative ideas to alleviate your concern. Generally, advocates and attorneys choose this line of work because we really care about kids and families.

- e. Establish with your advocate or attorney at the outset the level of support you would like, i.e. taking the lead, or backing you up. All parents have different preferences and good attorneys and advocates will take feedback from you on what you need. This may change throughout the process-- as such, it is vital to have good communication.
- f. The primary limitation on advocates versus attorneys is advocates cannot represent you in a due process hearing or any lawsuit. However, less than 10% of due process cases in Ohio reach a hearing.

As with most things, advocacy will get few fireworks and media frenzy, but hopefully the right outcome for your child and perhaps other children as well. So, as you are pondering what to do about an issue that has made you really angry, and perhaps wondering if you should fill out one or ALL of the complaint forms the Ohio Department of Education included with *Whose IDEA is This?* (informally known as the book you receive every year at an IEP with which you could paper your walls, but does have good information), here is a guide to your various options.

1. **Mediation and facilitation:** This is an excellent place to start if meetings have gotten really uncomfortable, downright nasty, or the team is simply unable to agree. The Ohio Department of Education provides trained facilitators/mediators to help parents and Districts reach resolution. These mediators have backgrounds in such fields as education, social work, or law. Mediators are not to take either side. This service is free, but both sides must agree to participate.
 - a. In a facilitated IEP, the facilitator will walk the team through the IEP, so that the District is not running the meeting. A facilitated IEP should allow adequate time for discussion, and may take several hours, but you should leave with an IEP with which you're comfortable.
 - b. A mediation differs in that its purpose is generally to try to resolve specific issues, which may cover the entire scope of the IEP or may just be one specific issue, such as placement, about which the team has not been able to agree. The mediator will work with the team, either as a group or separately as the situation warrants, to negotiate a solution. A mediation may take all day, but again, the goal is resolution. Generally, a mediation will end with a signed agreement between the two parties about services that will be provided or changes made to the IEP, etc. Often, mediation is entered into after a complaint has been filed, in part of the agreement will include withdrawal of the complaint, based on the results of the mediation. It is important to note that if the terms of the mediation agreement are not met by the school district, a complaint, can and probably should, be refiled.

Before moving on to complaints, there is a core issue that is important to understand about complaint remedies and enrollment. In very broad terms, remedies are most often confined to the District providing the appropriate services to the student, not monetary damages and the like. If you withdraw your child from a District, most times that District's obligation to the student ends. Parents are often understandably frustrated enough to disenroll their child and then want to file a complaint, or disenroll while an investigation is ongoing. In some circumstances, that may feel like the only choice. Be

aware, however, that doing so may limit the consequences for the school which were your goal in filing the complaint. For those reasons, we advise you to consider whether it is absolutely necessary to pull your child out before doing so. Do not make that decision based on your feelings. Is your child in imminent danger or psychologically stressed to the point of needing treatment, and would a medical professional agree? is really the question for which to consider removal, not your frustration. Bear in mind that if a medical professional were willing to back you on the removal necessity, it could strengthen your argument against the District as long as your child is not enrolled in another school. We are not saying you should never pull your child out of school, just that it has tradeoffs to be considered, and should not be a speedy decision. It is very easy to think "Anywhere is better than here!" when you are totally exasperated. Sometimes it is, and sometimes the new option brings new problems. If you are thinking of homeschooling, are you equipped to do it yourself or do you need a program? What services might your child lose in order to gain others if you choose a different type of program that is not a neighborhood public school? are all things to research. With that caveat, let's move on to complaint options to hold Districts and programs accountable.

2. **The formal complaint:** This is designed for issues relating to your child's IEP or evaluation in which proper time lines weren't met, proper forms may not have been used, or services may not have been provided that should have been per the evaluation or IEP. Submitting this complaint means you are requesting that the ODE investigate the issues and determine if the District was in error. This means ODE staff will interview you and the District staff, and ask you and the District to provide documentation to support how the issue has or has not been addressed. It is not necessary to cite the section of the law you believe has been violated. Description will be fine. However, here are some key points to remember:
 - a. Just because someone mistreats someone with a disability, that is not necessarily an IDEA violation. These complaints are specifically for issues related to IEPs and evaluations. A civil rights or professional conduct complaint would likely be more appropriate for issues related to bullying or discrimination.
 - b. There is a place on the form asking what school officials you addressed the issue with already. If you haven't tried to address anyone other than the teacher, therapist, or principal, try to work out the issue with the special education director before filing the complaint.
 - c. Document names and dates and incidents as best you can. Keep everything written to you and that you have written. If someone has told you something anonymously, that won't help you as much, if at all, as someone willing to go on the record. We all understand school staff sometimes want to alert parents and parents then want to protect these staff they see as on their side. Everyone may have the best of intentions. However, from an investigation point of view, anonymous or unwritten things are difficult, if not impossible to prove.
 - d. On the subject of having things documented, a note about recording--this is permitted in IEP or other related meetings as long as you notify the school in advance. Wiring your child to prove something is happening at school can be

done as well, but consulting with an education attorney **before** doing something like this is absolutely vital.

- e. Investigations can take up to 60 days. Remedies are usually providing the student compensatory services and monitoring and/or training for the District to hopefully prevent future occurrences.
 - f. If more than one student has the same issue, group complaints can be filed.
 - g. Complaints must be filed against your District of Residence, which is either where you live OR the community (charter) school in which your child is enrolled. A community school has all the same responsibilities under IDEA as your neighborhood public school. If your child is open enrolled in another public school district, the District where you live is still responsible for the IEP. This means your home District special education director should be invited to your child's IEP. You may have open enrolled elsewhere in hopes of never seeing that person again, but they are still accountable for your child.
 - h. If your child is on the Ohio Autism or Jon Peterson Scholarships, you cannot file a complaint against your District about failure to provide a free appropriate public education if your chosen provider cannot meet all the needs on the IEP. Some public Districts will still make agreements outside of the IEP to transport or pick up a cost, but this is entirely voluntary, not required. Complaints against scholarship providers are largely limited to whether or not they provided a billed service.
3. **The Due Process Complaint and Request for Hearing:** This is the big kahuna. It is used to dispute serious failures in providing a free, appropriate public education. It is often used in cases of failure to provide appropriate instruction or services over an extended period of time, or dispute a decision by the District regarding eligibility for services, or student placement. An expedited due process hearing can be used to fight an expulsion or emergency placement by the school for disciplinary reasons. **It is a request for a legal hearing presided over by a hearing officer. As such, be aware of the following:**
- a. The District's attorney will be involved.
 - b. The hearing officer is an attorney acting in the role of a judge, and cannot communicate with one side without the other being involved.
 - c. The hearing officer cannot advise you on how to present your case, or listen to your story and simply tell the District they are wrong. A hearing officer must weigh all evidence presented, and decide if there is a violation of law based on the evidence.
 - d. Like any trial, witnesses must be revealed in advance and each side must present documents they intend to use as evidence to the other side in advance.
 - e. Due process hearings are supposed to be resolved in 65 days or 15 days in the case of an expedited request. The reality is, like any legal proceeding, requests for extensions, and appeals can drag them out months or years. Meanwhile, your child's services "stay put" or remain the same until the issue is resolved.

- f. Having now possibly scared you out of a due process hearing request, don't despair. Our point in listing the above is so you know that due process, like pulling your child from school, should not be entered into lightly. Be prepared to make a very detailed written argument in your complaint for what you want with a clear explanation of why it is appropriate and what the District is offering is not. An attorney or advocate can, and really should, assist you with this. As noted above, an advocate cannot represent you at a hearing, write briefs or question witnesses if the complaint goes that far. However, the Due Process Hearing Request timeline requires a resolution meeting within 15 days of filing, with a further 15 days to resolve if necessary, and the option of mediation at any point in the timeline. Advocates are permitted to represent you at resolution meetings or mediations. A well crafted complaint is very likely to be resolved in those settings, and this type of complaint will definitely make the District take you seriously. On the chance that it is not resolved prior to a hearing, and especially if attorney fees are a barrier for you, however, it is definitely wise to find an advocate and attorney who are willing to work together before filing, to maximize your savings while assuring you adequate representation throughout the process.
4. **The Civil Rights Complaint:** This is not filed with The Ohio Department of Education, but with the U.S. Department of Education. Its purpose is not to address IEP issues, but failure to provide accommodations on a 504 plan (or provide a 504 plan), or address discrimination on the basis of disability, race, gender or religion. This type of complaint is appropriate for failure to accommodate in a class, or activity, a student being segregated from an activity, lack of appropriate accessibility, or a climate of bullying by students or staff, or disparate treatment by students or staff being permitted. Points to remember:
- a. Being disabled or being of a particular class listed above does not mean that anything inappropriate that happens to the individual is discrimination. The action has to be directly related to the disability or other classification.
 - b. Complaints can be filed online or by mail.
 - c. As noted previously, documentation or witnesses as opposed to just verbal reports, are most helpful.
 - d. The most recent incident must be within 180 days of filing.
 - e. After filing, if the complaint is determined to be sufficient, an investigator will ask both sides if they are willing to participate in Early Resolution. If agreed to, the parties meet, with the option of having a mediator from the Office of Civil Rights assist. If an agreement is reached, the OCR must be notified of the nature of the resolution and the agreed upon time frames to fix the issue. OCR will monitor whether these terms were met. If an agreement is not reached, OCR will proceed with an investigation and if fault is found with the District, order remedies, which usually include such things as providing the accommodations in question, staff training, or updating and clarification of policies. There is no set time frame on how long an OCR investigation may take.

5. **The professional conduct complaint:** This is the complaint that is used to discipline educators and may result in a suspension of their license. Many parents would like to file these after a teacher or principal has been inappropriate to them or their child. Be aware, however, that the emphasis on this type of complaint is things that may rise to the level of abuse needing investigation by Children's Services, or another type of crime. Whether or not the conduct has been reported to Children's Services or the police is one of the first questions on the form, which gives an indication what they are looking for. Issues of violations of privacy could be reported here as well. If the issue is not at this level, we recommend approaching it with your District superintendent first.

6. **An Americans With Disabilities Act Title II or Title III complaint:** These can be filed against private, non-religious schools (Title III) or public schools (Title II). Private religious schools are exempt from the ADA. (See our paper *Faith, Disability, and Educational Options* under Resources at www.brighthorizonsadvcon.com for more discussion of this issue.) Like OCR complaints, ADA complaints focus on failure to provide accommodations, and are filed with the federal government, in this case the United States Department of Justice. Complaints can be filed with the federal office via phone or online, or with your local branch of the U.S. Attorney's office. The U.S. Attorney will conduct an investigation, which can be quite lengthy. An attorney is not required for this type of complaint. A significant finding against a school, however, is likely to garner more media attention than the other types of complaints, because there is wider public awareness of the ADA.

Hopefully, this paper has given you some guidance on how to proceed in ways that have the greatest potential for helping to remedy your child's school situation. Even when you are feeling at your wit's end, the key thing to remember is you are not alone! Additionally, there are a variety of resources to address concerns beyond going to the media, or potentially spending thousands on a lawsuit.