

STATE COMPLAINTS AND OTHER DISPUTE RESOLUTION PROCEDURES

Broward ESE Advisory Council Meeting
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Before resorting to complaint processes

- **Research** and **know your rights** and what your child needs.
- **Write letter** specifically stating what your concerns are and what your child needs. Provide documentation.
- **Request meeting.** In meeting make sure that any comments you make are included in the notes, especially areas where you disagree with a team decision.
- **Request Prior Written Notice** of any adverse decisions.
- Keep in mind that you have an **ongoing relationship** with your child's school and the District. Even if you disagree, try to focus on issues and problem-solving, not emotion.

Resources

- **Wrightslaw:** www.wrightslaw.com
- **National support and advocacy groups**
- **Local support and advocacy groups** (check web and Facebook)
- **Florida Department of Education Website**
<http://www.fldoe.org/ese/ese-home.asp>
- **US Department of Education Office of Special Education Programs**
<http://www2.ed.gov/about/offices/list/osers/osep/index.html>

Advocacy at Meetings

- Parents are entitled to take one or more adults with them to Child Find, School-based Team, 504 or IEP meetings/
- Friends or family: An extra set of ears that is less emotionally involved can be helpful
- Private providers who work with your child can provide expertise to the team
- Non-attorney advocates have expertise on the special education process and can help.
- Attorneys can attend meetings with you if going alone or other options have failed.

Moving up the System

- If you have been unable to reach resolution with school staff at meetings, contact the District's ESE Department and ask that it send staff to the meeting.
- District-level staff generally have more extensive training and more exposure to legal compliance issues.
- If this doesn't work, contacting the ESE Director can help to ensure that the District's full attention has been provided to the matter.
- Be careful about contacting the Superintendent and School Board. They often refer the inquiries back to the District-level ESE staff, so it's best to go there.

State Complaints

The Florida Department of Education's Bureau of Exceptional Student Education (FDOE BESE) has **complaint** and **mediation** processes available to parents.

Instructions and forms can be accessed here:

<http://www.fldoe.org/ese/resolution.asp>

Be sure to fill out the forms completely and provide all facts and details to support your case. Feel free to attach documents.

Mediation

- Sometimes all that is needed is mediation by an outside neutral party.
- Some parents do not feel comfortable with an adversarial process yet need some assistance to get what is needed.
- Mediation is a discussion led by a trained neutral party aimed at resolving problems and finding solutions. The parties make all decisions and the mediator just guides the process.
- What is revealed or stated in mediation is confidential and cannot be used in later proceedings.
- Agreements reached in mediation are legally enforceable.

State (ESE) Complaints

- In a state complaint, an investigator for the FDOE BESE reviews the complaint, obtains documents and interviews from all parties, and issues a written decision.
- During the complaint process, the investigator may offer mediation to the family as an option for issues that might be amenable to resolution that way.
- All of this is at no cost to the family.
- The FDOE BESE must respond to **all** complaints brought by families of ESE/504 students in Florida public schools.
- For those issues that cannot be voluntarily resolved, the investigator will issue a written determination. The district may be ordered to take corrective action.

Important Points

- The FDOE BESE may not accept all issues for investigation through a state complaint. Issues of discrimination and retaliation will be rejected.
- Any issues that do not relate directly to the IEP or 504 plan may be rejected.
- Issues to be investigated should involve violations of the IDEA, Section 504, procedural safeguards, state law, or school district policy.
- The FDOE does not have authority to order monetary damages, although it can order compensatory education.

Why Complain to the State?

- The FDOE addresses problems that are brought to the forefront and will not do anything to address issues that are not highlighted. If we as parents and students want action to be taken on important issues that are negatively impacting our children's education, we need to make ourselves heard.
- The federal government, particularly the US Department of Education's Office of Special Education Programs (OSEP) keeps track of state complaints and focuses its attention on areas that show up as needing attention.
- Unfortunately, filing a complaint is the best way to let the District know you are seriously concerned about an issue and that you demand appropriate action. Just filing a complaint can sometimes resolve the underlying issue.
- Please note: If the case is withdrawn or resolved in mediation, there will be no permanent record of it for the purposes of statewide accounting.

State Complaint Process

- File Complaint Form with District ESE Director and send to Director of FDOE BESE, Monic Verra-Tirado.
- The state will send confirmation of receipt and an investigator will be assigned.
- The investigator will make an initial call to the family ask questions and clarify issues. It will also call the District to ask questions. Mediation may be suggested at this time.
- The investigator will send a letter outlining the issues and requesting additional information from the parties.
- A determination letter will be send within 60 days (90 days for gifted dispute cases).

Other State Complaints

Teacher Complaints:

Sometimes the school and district are doing what they can to comply with the law and to provide for a child's needs, but a teacher refuses to follow a child's plan or is otherwise recalcitrant. Filing a complaint with FDOE directly against the teacher is an option, as teacher licensing rules require teachers to behave ethically and comply with the law and with district policies.

<http://www.fldoe.org/edstandards/pdfs/ethics.pdf>

Bullying Complaints:

If schools do not comply with the State's bullying laws, complaints can be filed with the State.

<http://www.fldoe.org/safeschools/bullying.asp>

OCR Complaints

The **US Department of Education (USDOE)** has an **Office of Civil Rights (OCR)** that handles issues of discrimination and retaliation and systemic issues under Section 504 and the Americans with Disabilities Act.

- The State tends to refer complaints directly involving discrimination and retaliation here.
- Complaints must be filed within **180 days** of the related events.
- OCR has the right to accept or deny complaints. It tends to accept complaints that are systemic in nature or involved hot-button policy issues.
- If an issue can be resolved through a due process complaint, OCR will often reject it.

OCR Complaint Process

- Send a complaint to the school district and OCR providing the facts and documentation.
<http://www2.ed.gov/about/offices/list/ocr/complaintintro.html>
- This process is also free to parents.
- OCR investigators will follow up with a phone call in which it asks follow up information and usually shares its decision whether to take your case.
- OCR investigators will follow up with both parties for interview and additional documentation.
- OCR will issue a decision. If it finds a violation took place, it will try to help the parties negotiate a resolution. If that is not possible, it may litigate on the family's behalf or allow the family to proceed to a federal suit.

US Department of Justice's OCR

- If the US Department of Education's OCR rejects your case, and you feel the issue is truly compelling and involves a systemic issue, you can file a complaint with the US Department of Justice's Office of Civil Rights. It sometimes takes education cases when it feels the issue is important.
- The process is similar to the one for DOE.

Due Process and Litigation

- These are both dispute resolution processes available to parents.
- They are both costly, and due process especially is risky, especially for families without legal counsel. Generally, in order to reach federal court, families must exhaust their administrative remedies by going through due process or an OCR complaint.
- Attorney's fees can be reimbursed for prevailing parties who get a judge's stamp on the outcome, but expert witness fees are not reimbursible.
- Due process decisions are part of the public record, so they can help to change the system.



How to reach me

Any questions? Please feel free to contact me:

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