



LAW OFFICES OF YOUNG, MINNEY & CORR, LLP

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The Survival Guide to Special Education Due Process Complaints

Special education due process complaints are always a dreaded occurrence due to the potential expense and disruption to your school. They usually follow weeks of in-depth staff meetings discussing the needs of a student, upset parents that remain unsatisfied, and frustration on all sides. In order to best tackle a due process complaint you need to be prepared to appropriately respond. As a result we have created a quick cheat sheet of important steps to surviving your due process case:

1. Carefully Evaluate the Situation

When you identify that a possible conflict is emerging between the charter school and the parents of a student, evaluate the situation carefully, with legal counsel as necessary to ensure all proper procedures are being followed, all issues are being addressed in writing with the parents, and all services are being provided in accordance with the last agreed-upon and implemented IEP. There is potential to deescalate a situation in an attempt to prevent the parents from filing a due process complaint on behalf of a student.

2. Explore Insurance Options

It is highly unusual, but not unheard of, for a charter school to have insurance that covers the costs of a due process matter. Contact your insurance carrier to inquire about their coverage options and identify if they cover liability and representation for due process cases.

3. Notify your Local Educational Agency (LEA)

Once the complaint has been filed, you will need to act quickly. If your charter school is an LEA for special education purposes and a member of the SELPA, then you will be individually responsible for responding to the complaint. If you are not an LEA for special education purposes, then by default, you are a public school of your Authorizer for special education purposes. In that case, you should review your memorandum of understanding ("MOU") and notify your Authorizer of the due process as soon as possible and as required under the MOU. Your MOU should spell out the responsibilities of each Party in case of a due process.

Contact Your Legal Counsel, ASAP!

Charter schools have a right to retain legal counsel for a due process hearing, so take advantage of this right! Alert your legal counsel as soon as possible to facilitate the quickest defense and/or resolution of the matter. Legal counsel will help by:

- Assessing the legal requirements of the complaint: your attorney will review the complaint to make sure it is legally sufficient, and if not, file a notice of insufficiency within fifteen (15) days of receiving the complaint. In addition, legal counsel will ensure that all the necessary parties are named in the complaint to ensure that a full resolution can be accomplished. Lastly, your attorney will look to see if there is legal justification to request a dismissal of the case. While the Office of Administrative Hearings is hesitant to grant dismissals without a hearing, there may be situations where there is cause to explore this option.
- Filing a Response: your attorney only has ten (10) days from the receipt of a due process complaint to file a response with the court telling your side of the story. If the charter school has already submitted a prior written notice (PWN) explaining why it is refusing the request of the parents, a response may not be required.

- Analyzing the strength of your case: your attorney needs time to review the potential liability of your charter school. The amount of liability exposure a charter school has changes the tone of the conversation with the opposing attorney and is important for potential settlements prior to the hearing.

4. Identify, Collect, and Organize Relevant Documents

Compile and organize all documents relevant to the student, including, but not limited to: relevant individualized education plan (“IEP”) documents, assessments, correspondence, assessment plans, the student’s cumulative file, and any discipline history. Your legal counsel will need an opportunity to become familiar with the case, evaluate what evidence supports your position, and make appropriate recommendations for possible resolution or defense of the case. It may take some time to locate and organize this extensive amount of documentation, so start early!

5. Arrange a Mandatory Resolution Session

The charter school is required to arrange a resolution session with the parents within fifteen (15) days of receiving the due process complaint. The purpose of this meeting is to encourage dialog between the parents and the charter school about the issues of the case in hopes that a resolution can be reached. Generally this meeting is intended to occur without legal counsel; however, if the parents bring legal representation the charter school can also invite legal counsel. Parents can also choose to waive the resolution session with the agreement of all parties, including the charter school. If this occurs, the case will move forward to mediation.

6. Consider Optional Mediation

The charter school is not required to participate in mediation; however it is strongly encouraged under the IDEA. Mediation occurs within thirty (30) days of the filing of the due process complaint. Mediation is confidential and facilitated by a neutral third party. A majority of due process cases settle at mediation because: it often maintains an amicable school-to-parent relationship, it is the most cost effective for both parties, it limits the uncertainty of the judge’s potential orders at the hearing.

7. Identify and Notify Witnesses

If the matter does not settle at the resolution session or at mediation, your charter school needs to prepare for the due process hearing. This means that the charter school will need to put on witnesses to testify under penalty of perjury on behalf of the charter school. Therefore, it is critical to identify and notify these individuals as early as possible to identify their availability, their credibility as a possible witness representing the charter school, and the subject matter of their testimony. If someone that the charter school needs to testify refuses to comply, the charter school might need to subpoena the witness to force the witness to testify. If you believe a witness might testify against the charter school, your legal counsel needs to know that too!

8. Carefully Consider the Benefits of a 10-day Offer of Settlement

The charter school can make a settlement offer to the parents at least ten (10) days prior to the hearing and in doing so can limit the parent’s recovery of attorney fees. If at the hearing the parent’s relief is less in value than the settlement offer provided by the charter school, the court will likely prevent the collection of attorney’s fees from the date of the settlement offer through the date of the hearing. As a result, parent’s legal counsel will consider this settlement offer very thoughtfully.

Young, Minney & Corr, LLP maintains a student services division of attorneys that focus on special education, due process mediation and hearings, special education compliance under the IDEA and state law, Section 504 compliance, LEA and/or SELPA compliance, and all other student services issues.

These specialized attorneys also lead trainings for charter school staff and board members on student services and special education compliance to help protect charter schools from liability.

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