



from Equip for Equality's Legal Advocacy Program

EFE FACT SHEET – Special Education

Remedies in Special Education

Remedies: What can I get for my child in a due process hearing?

Introduction

When requesting a due process hearing it is important to know what your goal is. In other words, you must be able to state clearly in writing your specific objective; what is it that you want the hearing officer to do if you prevail in the hearing? If you cannot explain clearly and simply what it is that you want from such a hearing, no hearing officer will be able to find in your favor, and the hearing process will not serve you well or the school district. It is also important that you can prove that your child needs the specific services or education that you seek in a due process hearing.

Examples of Special Education Remedies

The remedies must relate to a specific, unmet need of the student. Some remedies parents could ask for may include:

1. That the hearing officer order the school district to take action to, for example

- Provide a specific service such as speech therapy or occupational therapy for a specific period of minutes per week in order to benefit from education;
- Change a child's placement from a segregated non-public school to a public school;
- Provide specific training in a particular disability or educational technique (i.e. technology training) to school employees having responsibilities to the student;
- Move a student to a different placement
- Implement a particular educational methodology (i.e. Picture Exchange Communication), or a picture schedule with the student in the classroom;
- Provide the child with sensory breaks
- Use positive behavioral supports with the child.
- Reimburse the parents for specific services the school should have provided – see Compensatory Education and Services
- Provide an Individual Education Plan (IEP) to a student who was previously found not eligible.

2. An order for the school to stop something it is doing, for example

- Stop restraining a child
- Stop suspending a child inappropriately
- Stop classifying a learning disabled child as having an emotional disorder if the child does not have an emotional disorder

3. An order for Compensatory Education and Services

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A hearing officer could order compensatory education/services under circumstances when a hearing officer finds that a student was not provided with a free, appropriate public education. (“FAPE”)

The goal of compensation is to put the child in the position he/she would have been if the school had done the right thing. This can take many forms and there is no specific formula for what must be provided. While anything a child needed to benefit from special education could be included, some examples of compensatory education are:

- Additional minutes per week of a related service for a certain number of months or years in addition to the minutes the student was already receiving;
- tutoring services before or after school;
- reimbursement to the parents for the cost of providing services that the school should have been providing such as a related service like transportation, occupational therapy or speech therapy.

Can a parent receive monetary compensation when the hearing officer determines the school district denied the student with FAPE?

The short answer is “no”, you cannot usually receive money as a distinct remedy for “damages” in a due process hearing for such inconveniences as lost wages or emotional distress¹.

However, a court could order a school district to provide money for a specific purpose such as:

- to allow the parents to pay for compensatory services or
- to reimburse the parent for services already provided or
- to reimburse for the cost of a private school if the parents can prove the the student had not received FAPE, *and* if parents followed the correct procedures prior to enrolling the student in a private school;

If your child is not making educational or social progress at school, and if other means of resolving the issue, such as mediation or other efforts at IEP conferences are unsuccessful, you may have reason to consider requesting a due process hearing. To determine what to ask for in a due process hearing, review any private evaluations as well as the current school evaluations and look at the recommendations. Are there recommendations listed that your child needs in order to make progress in school? If so, those are the remedies you need to ask for in a due process hearing.

For further reference on resolving differences with your child’s school district, please refer to Equip for Equality’s fact sheet entitled “Due Process Hearings and Other Dispute Resolution Methods.”

¹ Parents who believe they may have a damage or tort action against a school district for physical or emotional harm to the child in special education should also consult an attorney who specializes in personal injury actions against public entities. Special statutes of limitation laws may apply.



DO YOU HAVE A QUESTION?

Contact Equip for Equality (all services are free of charge):

800.537.2532 (voice) or 800.610.2779 (TTY)

Contactus@equipforequality.org

www.equipforequality.org

This resource material is intended as a guide for people with disabilities. Nothing written here shall be understood to be legal advice. For specific legal advice, an attorney should be consulted.

Equip for Equality, an independent nonprofit organization, is the Illinois state Protection & Advocacy System whose mission is to advance the human and civil rights of children and adults with disabilities.

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