

Chapter 9

INFORMAL PROBLEM SOLVING

What This Chapter Is About

Although formal procedures exist for resolving disputes over special education services, informal methods often work better and more quickly. The special education process offers several opportunities to informally resolve problems. This chapter outlines basic problem-solving steps. At the end of the chapter are some examples for practice and a list of common problems and solutions – some using informal dispute resolution, others using more formal processes.

Advocacy Hints in Chapter 9

- ◆ Know when to resolve particular problems at a particular level (Page 3).
- ◆ Use the evaluation process to gather information and identify new solutions (Page 4).
- ◆ Use the expertise of the special education staff when possible (Page 4).
- ◆ Be reasonable about returned calls (Page 4).
- ◆ Agree when you can (Page 5).
- ◆ Propose reasonable solutions to problems (Page 5).
- ◆ Be mindful of how much time each process takes (Page 5).
- ◆ Go to the responsible person to solve a problem (Page 6).
- ◆ Know which formal process to use and when (Page 6).
- ◆ Focus on students' needs and recognize teachers' needs (Page 6).

Parents care about how well their children are doing in school. If a child has specific needs related to learning or disabilities, they want to make sure that the child gets appropriate help. They want early and appropriate identification of conditions that make it difficult for the child to achieve in school. They want to make sure that the school is doing all it can do to provide remediation or special programs that address the child's needs. Parents also want their children to be happy at school, to enjoy learning, and to have good school experiences. They want people outside their families to think well of their children as learners and students. When there are problems in school, parents want access to the information and the help they need to resolve these problems.

Special education law protects the eligible student's right to a free, appropriate, public education while it follows other laws in offering formal methods of problem resolution. The

resolution methods in the law are discussed elsewhere in this manual. They include complaints, hearings, independent evaluations, and appeals to federal and state courts. Most differences between schools and parents, however, can be resolved in the informal ways disagreements are usually resolved—by talking to a person with power to help or by discussing the problem and coming to an agreement about a course of action.

Because emotions are involved, disagreements in school can be difficult to resolve. Parents can feel threatened and off balance when their children are not doing well. While formal processes must be used on occasion, they often take time and may further damage the relationship between parents and the school.

Knowing how to resolve disputes both formally and informally is the key to effective advocacy. This knowledge can help parents improve their children's education and can build and maintain cooperative relationships with school staff that make significant contributions to their children's well being.

Action Plans

The following is a suggested plan of action for parents or adult students to use when seeking an informal resolution to a problem. At any point along the way, you may wish to contact an advocacy agency, a disability-related support group, or other parents for information or strategies to use in resolving problems.

1. Identify the problem.
2. Identify the kind of problem.
3. Gather information.
4. Find the person who can help.
5. Identify possible solutions.
6. Agree on how you will know the problem has been resolved.
7. Follow up.
8. Know what to do if informal solutions don't work.

(1) Identify the problem. It is important to be very clear and exact when you define a problem. It is not possible to emphasize this step too much, because it is the key to problem resolution. While problems can be stated in broad terms, the narrower the definition is the more likely it is that a resolution will be reached.

A problem stated as "The principal doesn't like my child and keeps picking on him and sending him home," will have a solution that is dependent on factors that are, for the most part, out of the parent's hands, such as interactions that occur at school on any given day, how patient the principal is, or how non-confrontational the child is. Defined more narrowly, however, the problem might be stated as "My child has a difficult time in situations where he has to wait

quietly. These situations often involve times when the principal is supervising, such as in the lunch room, lining up to come into the school, or in the halls. My child gets restless and starts teasing the other children by poking and pushing.” With this definition of the problem, you have identified a time when the situation occurs, the important players, the action that takes place, and the situation that precedes the action. With this definition, a solution is much more likely.

(2) What kind of problem is this? To find the information you need to resolve the problem and the person or people who can help you, you need to have a good idea about what kind of problem you have.

Is this a human interaction problem? Do you need to meet with someone other than the assistant principal to be comfortable?

Is it a process problem? Do you need to resolve something such as how quickly the school notifies you about absences, tardies, or grades?

Is it a program problem? Do you need to resolve issues such as therapy, behavior interventions, or accommodations?

Is it a developmental problem? Do you need to learn more about special education law, or is the difficulty with a general school policy?

If you go to your school board to resolve an issue related to your child’s IEP, you will not find a solution. The school board cannot order more speech therapy. On the other hand, if you want to work on issues related to getting rid of the modules where some classes are held and getting more classrooms, you may wish to go to the school board. Remember that there may be an overlap in responsibility.

► **Advocacy Hint: Be clear on the kind of problem that can be resolved at any particular level.** If the student's IEP services include a notebook that will be kept on a daily basis as a teacher responsibility, and this is not happening, you may be able to work out a resolution. If you believe your child needs specialized transportation because of problems on the bus, this is a change in program and will take an IEPT.

You may also find that the issue you are trying to resolve is one that is affected by federal law, such as an inaccessible school building, or whether there is an interpreter at a school play.

(3) Gather information about the issue. This is the time to determine where you can get the information you need. If you believe that this is a special education problem, determine whether special education law or any other federal or state law includes any mechanisms that will help you.

Do you need information on how school personnel determine what physical therapy is needed or on how they decide that they need an individual aide for a child? Do you need to know how long it takes for an initial special education evaluation or where to get information on how often a student can be suspended? If you believe that your child needs to use a computer for his written assignments or needs to use a recorder to tape lectures, you may want to find out how the school determines whether this kind of assistive technology is necessary and who pays for it.

► **Advocacy Hint: Services are provided based on evaluations.** If the parent thinks the student needs service, start by requesting that the school evaluate the student. The school has the right — and the obligation in the law — to provide evaluations or to contract for them. If the parents disagree with the evaluation, they may ask for an independent educational evaluation. Related services, such as speech or physical therapy, are not provided at parent request but are provided because there is evidence and experts who believe the student must have them to benefit from the education.

(4) Identify a person who can help you solve the problem. Go to the person most likely to be able to help you. If you have been asking the principal for a special education evaluation for your child and nothing has been done, you may wish to contact the special education director or supervisor. If the teacher has not been sending home your child's notebook, you may want to contact him or her first rather than asking for an IEPT meeting.

► **Advocacy Hint: Remember to deal with the special education staff when you are having problems with special education issues.** While meeting with the school superintendent may be a good idea, he or she may not have the extensive knowledge about special education needed to solve the problem. The special education director at the district level or at the ISD level is the most knowledgeable person on the school staff about special education services.

Remember that the person at the top does not always have all the information. Even though it may sound like a good idea to call the school superintendent, especially when you are angry, that person may not be the most knowledgeable about special education services—and certainly not about your child. Similarly, the special education director may not know all about your child's program if the school psychologist is usually the person who conducts the IEPT meetings.

► **Advocacy Hint: Be reasonable about returned calls.** No one wants to make calls to someone who always gets upset or gets angry. If you know your child's needs require a lot of contact with the teacher, it only makes sense to make some of these contacts purely positive. If a significant problem exists, you may wish to use the "two heads are better than one" solution and ask for an IEPT meeting. If you want the psychological tests explained, go to the person who did them.

(5) Identify possible solutions. Along with identifying the problem, it is important to identify possible solutions. If you are careful enough at this definition, at least one solution may seem obvious. “My son never gets his homework done. He knows the work, and does pretty well on tests, but his grade is partly based on homework.” Narrowly and clearly defined: “The school has provided a list of homework assignments. I am willing to work with him; the problem is he doesn’t remember to bring home his books.”

► **Advocacy Hint: Agree when you can.** Your child has ADHD. He forgets everything and is very disorganized. The school says, “He has to learn to be responsible.” You can agree with the school on the issue of responsibility, since responsibility is a really good idea. Use the school’s expertise to help him learn how to be responsible. Because this is an issue that is interfering with his education, ask that the school identify how he can learn to be more responsible.

Try to think of several solutions to any given problem. The solution may not necessarily be expensive. Instead of a full-time aide to keep a student on task, could the classroom include quiet areas where the student can work?

► **Advocacy Hint: Propose reasonable solutions.** Many of the problems that occur do not require extraordinary expertise to resolve. If you have a solution that you think will work, propose it. When you request a hearing, IDEA regulations require that you clearly identify the issues for hearings or complaints and give these issues to the school along with their proposed solutions. This is a step that can be taken at any time.

(6) How will you know the problem is resolved? The next step is to identify how you will know the problem is resolved. It may help to devise a measure for determining when the parent and the school will agree that the problem is actually resolved. When a parent says a child can’t read, and the school claims the child can, that he reads on a third grade level, clarification may be necessary so that everyone is measuring the same thing in the same way. The school may be using a test to determine the child’s reading level; the parent may be using a classroom situation in which he or she heard the child reading aloud very hesitantly. The way the parent measures “reading” can be part of the solution.

“Ms. Smith, how will you know when Johnnie can read?” “When he can read the newspaper out loud pretty fluently.”

► **Advocacy Hint: Mind the calendar.** If you can resolve issues by discussing the problem with the teacher or special education director and by proposing a reasonable solution, you may resolve the issues in a day. If you need a due process hearing, you may be looking at several months.

(7) Follow up. Keeping track of the implementation of a problem resolution is often harder than you would think. Occasionally there is a clear way to track follow-up. If it exists, it is likely to be in the law. An example of this is the initial special education evaluation. A specific number of days are delineated for specific events. If this is not the case, you may wish to determine, with the person who will be responsible for implementation of the solution, just how follow-up will be done. Set a meeting date to review progress. (A short meeting with only those directly concerned is suggested.) Johnnie has a new behavior plan? Meet with the teacher and the social worker for a few minutes after the plan has been in effect for a few weeks to see how it is working. Don't forget that every IEP includes the name of the person assigned to ensure implementation. This is a source of information on how things are going and is someone who can help with occasional or ongoing problems.

► Advocacy Hint: Who is responsible? The IEP identifies (usually on the last page) the person who is responsible for implementing the IEP. This may be the principal, the resource room teacher, a teacher consultant, or the special education director. If questions arise about carrying out the IEP program or services, talk to this person first. The person responsible for implementing the IEP is also responsible for making sure that staff are inserviced on behavior plans and for making sure that the accommodations ordered for students who need them are actually put into place.

(8) What if informal processes don't work? Don't skip to this part too quickly. It might take significant effort to resolve the issues, and the solution may not totally eliminate the problem right away. So don't be afraid to go back to the drawing board if the solution you tried doesn't work. It's worth it.

► Advocacy Hint: Use the right process. Some problem resolution methods, such as the complaint process, may be used by anyone, while others (such as due process hearings or independent evaluations) are specifically available to the parent only. While an informal resolution to an issue such as timeliness of an initial evaluation and IEPT meeting may hurry up an overdue process, it may not provide the evidence you may need to get additional or compensatory services to make up for the lag in the eligibility process. In these cases, you may need to be formal in the complaint process.

If you have followed the problem resolution approach in this chapter, you have compiled valuable information even if the process breaks down. You will have your issues and solutions ready if you ask for a hearing or file a complaint, and you may be better able to maintain a workable relationship through the formal processes.

► Advocacy Hint: Resolve problems in ways that recognize the needs of both student and teacher. If people are forced into a solution that doesn't meet their needs, they will consciously or unconsciously find ways to undermine it. Meeting their needs will make it more likely they will meet yours.

Action Plan Checklist

1. Identify the problem.
2. Identify the kind of problem.
3. Gather information.
4. Find the person who can help.
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Effective Advocacy Techniques

Advocacy is the willingness of one person to assist and to follow through on securing or protecting the rights of another. Effective advocacy is not easy, but the advocate who knows the student, who has mastered the technical material, and who is willing to present the student's needs in a calm, rational manner can do much to obtain appropriate educational programs and services. Here are some basic guidelines for advocates (and school personnel) to follow to be as effective as possible.

- ◆ Identify differences of opinion; listen and ask questions until you understand the other point of view.
- ◆ Try not to get upset or use "authority" to resolve issues. Special education programs are based on expert opinion, not "Mom said" or "We don't do it like that in this district." Remember: You are not powerless.
- ◆ Come to meetings prepared to discuss problems and solutions. Hint: Remember that there can be many solutions to individual issues. When you are adamant that there is only one solution, you may eliminate solutions that might be even more effective.
- ◆ Be concise.
- ◆ Know what is on your child's IEP, and keep a copy handy for quick reference.
- ◆ Save copies of evaluations. Increases of services are easier to obtain if you have the school's own evaluations documenting that there is no progress.
- ◆ Take your time. Do not feel pressured to sign something immediately. Take a copy home and think about it.

- ◆ Keep track of releases of information that you sign (you may want to withdraw a release once the proposed information is received).
- ◆ Arrive promptly at meetings.
- ◆ Be as open as possible with information. But do not feel pressured to reveal family information that you do not wish the school to know.

The most important thing to do at a meeting with the school staff is to listen. The second most important thing is to ask questions until you are certain you understand.

Informal Problem Solving in the Complaint Process

Before filing a complaint, it's often a good idea to try informal methods of resolving the issue before you use the formal complaint process. This is a win-win situation. You have the opportunity to quickly resolve the issue, and you don't lose the right to file a complaint if the informal method does not work.

When you think the school has violated the law and are considering filing a complaint, you may want to start by talking to someone who has the authority to change the situation. Remember that while many people on the general education staff such as school principals and counselors deal with special education issues and students, they may not have the expertise or authority necessary to resolve **complaint** issues and occasionally do not recognize these issues. They may not be able to steer you to the appropriate person.

First try to contact the special education director, supervisor, or coordinator in your school district and discuss the problem with that person. If the problem is with a service provided by the ISD, contact the ISD special education director.

If the problem does not get resolved, contact the person responsible for investigating complaints. This will most likely be a person at the Intermediate School District; either the person in charge of compliance and monitoring or in some cases the special education director. Occasionally, when you file a formal complaint the compliance staff person will ask if they can work on resolving the complaint informally. This may be a good idea. You must consider, however whether the resolution of the complaint if done informally will provide the same outcome for the student within the same timelines.

Informal Problem Solving in the Hearing Process

There may be some issues that cannot be resolved without a due process hearing. Even if you have filed a hearing request, there are alternative ways to resolve your disagreement with the school. Mediation offers an informal and effective way of resolving differences between parents and school districts. Trained mediators may be requested by either the school or the student's parents or guardians. Mediation is voluntary, confidential, and does not preclude the right to a hearing. Differences may be resolved with less stress and in a shorter time than is necessary for more formal proceedings.

The Effective Advocate

The effective advocate should fully understand informal problem-solving techniques, mediation, and the process for making a formal complaint or initiating a due process hearing. But, primarily, the effective advocate is someone committed to resolving issues in a way that protects rights and encourages collaborative solutions.

There is always a danger in special education advocacy to make a point of the issues in the law. "Can the school do that?" is not a helpful question if "that" has already occurred. While it is sometimes difficult to keep in focus, most parties involved with the student's IEP want to resolve issues. Formal proceedings can be very expensive for the school and sometimes for the parent. While necessary on occasion, they do not always contribute to the long-term relationships that are required to educate students.

Your Chance to Practice

The following pages list some frequent special education problems. This is your chance to practice the action plans we have presented in this chapter.

John is defiant and impulsive, and he often leaves his EI classroom. He is often in the principal's office. The teacher calls John's mother at work almost every day, and at least twice a week the principal calls her to come and take him home. John's mother is worried about keeping her job, and none of her conversations with the principal go well. John has been suspended on several occasions. His mother claims that the principal and teachers lie about John's behavior because they don't like him and are trying to keep him out of school. John is in the fifth grade, but this has been going on since kindergarten.

Identify the problem_____

What kind of problem is this_____

Plan for gathering information_____

Find the person who can help_____

Identify possible solutions_____

How will you know the problem has been resolved_____

Follow up_____

What if this doesn't work_____

You think your son needs more speech therapy but the school won't increase it.

Identify the problem_____

What kind of problem is this_____

Plan for gathering information_____

Find the person who can help_____

Identify possible solutions_____

How will you know the problem has been resolved_____

Follow up_____

What if this doesn't work_____

Jim often gets into trouble on the bus. He has no relationship with the driver, who he says yells at him, and he often gets bus suspensions.

Identify the problem_____

What kind of problem is this_____

Plan for gathering information_____

Find the person who can help_____

Identify possible solutions_____

How will you know the problem has been resolved_____

Follow up_____

What if this doesn't work_____

Jack never gets his homework in on time. He does it, but it is in his backpack in his locker. The teacher gets upset with him because he never brings it to school. His mother has been to the school almost weekly and does not believe his teachers know how hard it is for him to be organized.

Identify the problem_____

What kind of problem is this_____

Plan for gathering information_____

Find the person who can help_____

Identify possible solutions_____

How will you know the problem has been resolved_____

Follow up_____

What if this doesn't work_____

Beth has several hours of homework every night. Her mother works with her, but Beth is frustrated and angry every night because it takes so long to do the work.

Identify the problem_____

What kind of problem is this_____

Plan for gathering information_____

Find the person who can help_____

Identify possible solutions_____

How will you know the problem has been resolved_____

Follow up_____

What if this doesn't work_____

Appendix 9-1

Common Problems and Solutions

“The school says my doctor’s letter is not enough.” This problem surprises many professionals from other systems who make diagnoses and expect them to automatically result in special education eligibility. Most special education categories are defined legally, not clinically, and even disabilities that fit special education eligibility criteria must have a demonstrated impact on education.

To resolve this problem, ask the clinician or evaluator to explain if and how a child’s diagnosis fits into a special education classification when making any diagnosis or recommendation.

“I don’t agree with what the school district’s evaluator said.” It is important to identify the reason for disagreement. Standardized tests often may not be retaken immediately because of “practice effects” associated with some. In those cases, ask a clinician with comparable qualifications to review the testing.

More commonly, however, there may be disagreement with the interpretation of test results, observations, record review, or conclusions reached by evaluators. The easiest way to resolve this problem is to ask the evaluator to explain his or her findings. The IEP team must include a person who is knowledgeable about any evaluations conducted and can answer questions about them. If, after the explanation, there is still disagreement with the evaluation, a parent may request an independent evaluation.

“The school said my child is not eligible.” Sometimes a school district may only look at one or a few eligibility categories, such as specific learning disability. The district may do this because specific learning disability is the largest category of eligibility. In some isolated instances, a school district may even attempt to make an eligibility determination without an evaluation and discourage a parent from requesting an evaluation.

The law assures the right to seek an evaluation in all suspected areas of disability and does not allow school districts to prescreen applicants. To resolve this problem, ask the school district to evaluate for eligibility for all suspected areas of disability under IDEA, state law, and Section 504.

“The school says I should not ask for special education eligibility because my child would have to go to a special education class or school.” Some schools think that special education is a place and that eligibility for special education automatically requires moving a child into a special education program. Sometimes these assumptions are driven by how special education services are funded, a practice that violates IDEA. Other times, they are driven by misperceptions about the nature of special education services and supports.

To resolve this problem, ask for an evaluation, then advocate for individualized support. Consider beginning the discussion by assuming that the child will attend school in general education with supports, then move to more restrictive placements only if absolutely necessary.

“The school never acted on my verbal evaluation request.” In most cases, timelines don’t begin until the school receives a written request to do something. This creates particular problems for children in foster care who move from one district to another, as any delay in acting upon an evaluation request may result in no services or supports being provided.

If communicating with the district in writing creates an overly formal relationship, one way to address this problem is to call the district, make the request, and then follow up with a letter or note.

“The school won’t implement my child’s IEP when I move into a new district.” When a child with an IEP moves into a new district, the new district must do one of two things: (1) implement the IEP as written with similar or comparable services; or, (2) convene a new IEP team meeting and write a new IEP. As a practical matter, transfers often slow down services because of delays in transmitting records.

To help resolve this problem, work with the parent to request an inspection of the child’s file and obtain a copy of the child’s current IEP and most recent evaluation report.

“The school won’t give my child the services or supports she needs.” One of the most commonly-overlooked problems with IEPs is the failure to include robust, up-to-date, and measurable goals. Services and supports must be designed to meet an IEP goal. IEP goals are in turn derived from the present level of academic achievement and functional performance (PLAAFP) and, to some extent, are tied to the general curriculum standards set by the state that apply to all students.

To address this problem, check the IEP goals to make sure they are current, robust, and measurable. Check the Michigan Department of Education’s grade level content expectations for various subjects and grade levels at www.michigan.gov/mde to see if a goal is strong enough. To be sure that a goal is measurable, apply the “stranger test,” i.e., whether a total stranger would be able to tell, based on performance, that the child is making progress. The goals and objectives should not be written using words like “improve” or “increase.”

“I don’t agree with the way the school is teaching my child.” This problem may show up because the school is not using a preferred teaching method, or because the child is not learning under the current method.

Methodology is the school’s choice, but it must be reasonably calculated to help a child learn based on his or her individual needs and must be, to the extent practicable, based on peer-reviewed research.

Progress should be more than minimal. To resolve this problem, schedule regular reviews to discuss progress, and insist on different methods if current ones don’t work.

“The school will not write a service or accommodation into an IEP.” When a service is included in an IEP, the parent has an enforceable claim to receive the service. A few school districts mistakenly believe that refusing to write a service into an IEP relieves them of responsibility for providing the service. Such a practice is contrary to federal law.

If persuasion doesn't work, use the complaint process discussed in the following section to argue that the school is not following the IEP process.

“The school is not providing a service in my child’s IEP.” Usually this problem comes from a lack of staff or from not providing information to staff about the child’s service and program needs. Although these reasons may be honest explanations for the failure to provide IEP services, neither of them can excuse the school from providing the services.

To resolve this problem, try some informal methods of resolving the problem before filing a formal complaint. Start by talking to someone who has the authority to change the situation. Remember that while many people on the general education staff (such as school principals and counselors) deal with special education issues and students, they may not have the expertise or authority necessary to resolve complaint issues and occasionally do not recognize them.

Next, try to contact the school district’s special education director, supervisor, or coordinator to discuss the problem. If the problem is not resolved, contact the person at the Intermediate School District (ISD) or the Michigan Department of Education (MDE) responsible for investigating complaints. This will likely be either the person in charge of compliance and monitoring or in some cases the ISD special education director.

If a formal complaint is necessary, send a copy to the local school district as well as to MDE. Occasionally, when a formal complaint is filed, the investigator will ask if they can try to resolve the complaint informally. This may be a good idea, but consider whether resolving the complaint informally will provide the same outcome for the student within the same timelines.

Complaints about problems with a Section 504 plan should be filed with the U.S. Office for Civil Rights. 504 complaints must be filed within 180 days of the event that you are complaining about. Unlike IDEA complaints, there are no formal timelines on investigation of such complaints.

“My child is starting to have behavior problems and the school keeps suspending him.” Behavior issues may not be reflected in the PLAAFP, or there may not be IEP goals for behavior, or there may not be an appropriate behavior assessment or plan. To resolve this problem, ask for an IEP meeting or for a functional assessment of behavior and behavior support plan before the problem gets worse. It’s especially important to resolve behavior issues early, because the 2004 changes in the law make it much more difficult to challenge the adequacy of a program in a manifestation review.

“The school will not write behavior goals unless the child is labeled as emotionally impaired.” This myth is an extension of the mistaken belief that a school must only meet a child’s needs that come from the category of eligibility under which the child falls. To resolve this problem, ask the IEP team to describe present levels of performance in all areas of disability and write goals that completely identify the child’s needs.