
Recommendations for More Expeditious Resolution of Special Education Disputes

One clear finding in the examination by the North Carolina Center for Public Policy Research of dispute processes in special education is that the state exceeds the time allowed in federal law to resolve due process hearings. A second clear finding is that North Carolina could offer a broader array of options that provide the opportunity to resolve special education disputes before they reach the stage that a due process hearing becomes necessary. Thus, the Center offers recommendations with the following two policy goals: (1) to provide timely resolution of due process hearings in accordance with the law; and (2) to provide a process for developing a continuum of dispute resolution processes that would prevent due process hearings if at all possible.

Federal law and regulations indicate special education due process cases routinely should be resolved in 45 days. North Carolina's Office of Administrative Hearings fails to meet this standard in 90 percent of its cases. Nearly a third of these cases (30 percent) take more than a year to resolve. While slow resolution of due process cases is a problem in other states, North Carolina is even slower than most, perhaps because it houses its dispute processes within the quasi-judicial Office of Administrative Hearings instead of the Department of Public Instruction or perhaps because the toughest cases end up in due process hearings. Extensions in concluding the hearings are almost always at the request of one party and with the consent of both attorneys, so the Office of Administrative Hearings is not purposefully delaying the cases. But it needs to be part of the solution because otherwise children can remain stuck in an inappropriate education.

Within OAH, these cases are tried like court cases, using the same rules of civil procedure and evidence as are applied in North Carolina's courts. The result, not surprisingly, is that these cases take as long as some civil litigation, even though federal law is clear in setting an expectation that cases be resolved much

quicker. Meanwhile, the child is held in his or her current educational placement while the dispute is being resolved. While OAH may not be violating the letter of the law in taking so long to resolve these cases, it does violate the spirit of the law. Therefore, the Center recommends the following:

(1) The Office of Administrative Hearings should resolve due process hearings on a timely basis, with a goal of reaching a decision in the majority of these cases within the 45-day period established in federal law. Further, the Office of Administrative Hearings and the Department of Public Instruction should be required to report annually to the legislature's Government Operations Committee on progress in improving performance on this standard. Clearly, some cases will exceed the time limit due to special circumstances, and the law allows for these *where both parties agree*. But federal law and regulations indicate special education due process cases routinely should be resolved in 45 days. As mentioned above, North Carolina's Office of Administrative Hearings fails to meet this standard in 90 percent of its cases. Nearly a third of the cases (30 percent) take more than a year to resolve. Virtually every case should not be an exception to the rule.

It may be that some reforms will be necessary to speed the process. One possibility might be pursuit of modification of the rules of civil procedure to give administrative law judges greater authority to place limits on discovery and the hearing. Yet another solution might be the creation of a special subdivision within the Office of Administrative Hearings to deal only with special needs disputes and thus expedite these cases. Most states resolve their special education disputes within education departments. North Carolina is unusual in that it uses its Office of Administrative Hearings. One positive feature of this system is that it creates a greater sense of impartiality. A negative is that

the process takes a great deal of time, which adds to the expense and frustration for all parties concerned. Rather than create a special subdivision, judges might consider using their existing discretion to speed the resolution of cases. Ultimately, however, performance must be improved.

Yet it also is readily apparent that the best way to avoid a long and time-consuming due process hearing is to resolve the dispute before it reaches the point that the two parties are ready to tear out each others' hair in frustration and are resolved to go to court. Of course, the best way to do this is at the school level, with a caring principal, teachers, and parents working together to meet the educational needs of the child. But above the school level, state and local education officials should provide a more fully developed continuum of options for solving the problem short of the Office of Administrative Hearings or court proceedings. Therefore, the Center also recommends the following:

(2) The Superintendent of Public Instruction and the State Board of Education should create a task force in 1999 that brings together representatives in the various dispute processes to evaluate options and make recommendations to the N.C. General Assembly and state agencies by the year 2000 toward the development of a continuum of dispute processes in North Carolina. The goal of the continuum to be developed by this task force would be to reduce the number of dispute process hearings by providing more opportunities to resolve conflicts before they reach the litigation stage. Models for such opportunities to resolve conflict abound. In the San Diego City Schools, parent facilitators are helping parents resolve conflict with educators before it reaches the stage that both sides are entrenched in position and more rigorous forms of dispute settlement are required. In Michigan, impartial review by an outside party has been used successfully to settle disputes. Mediation provides yet another option for preventing expensive and divisive due process hearings. In a study conducted for the U.S. Department of Education, at least seven states that collect data on mediation programs — Arizona, California, Colorado, Il-

linois, Massachusetts, Minnesota, and Vermont — reported high rates of conflict resolution (at least 80 percent). Information collected by the Minnesota Department of Education found that 96 percent of mediation participants in special education disputes would use mediation again and would recommend it to others.

A continuum for North Carolina would place preventive measures at one end of the spectrum — such as encouraging better communication between parents and educators. At the other end would lie due process hearings and civil litigation. In between? Formal complaints to the Department of Public Instruction, impartial review, mediation, dispute resolution, and arbitration. The objective would be to have as few complaints as possible reach the due process and litigation side of the continuum. Should this objective be realized, there is potential for saving parents, educators, and taxpayers considerable expense and frustration. But the ultimate beneficiaries will be North Carolina's children with special needs if disputes involving their education are resolved more amicably, quickly, and effectively.

The task force should include representatives of the Office of Administrative Hearings, the Department of Public Instruction, hearing officers, disability advocates and lawyers, school district lawyers and directors of special education, principals, teachers, parents, and representatives of the mediation and alternative dispute resolution centers. Such a task force should commission research, gather information, carefully evaluate the options for improving the dispute resolution process, and then make recommendations to the N.C. General Assembly by the year 2000 where legislation is required and to the Office of Administrative Hearings and the Department of Public Instruction where simple changes in agency policy will suffice.

The task force should seriously consider stepping up North Carolina's efforts in parent facilitation, conflict resolution, and mediation. Results of the task force's recommendations should be monitored, and a report evaluating effectiveness given to the State Board of Education three years after implementation begins.

—Mike McLaughlin