

Evaluative Conciliation Conference: A New Option for Helping To Resolve Special Education Disputes

By Cathy A. Skidmore



About the Author: Cathy A. Skidmore, a special education hearing officer, has been active in the field of special education dispute resolution in Pennsylvania for nearly 20 years, in both formal and alternative dispute resolution processes.

She earned her undergraduate degree in special and elementary education from Slippery Rock University of Pennsylvania, her juris doctor from Duquesne University and her master of education in a program of general special education from the University of Pittsburgh.

She has been a frequent speaker and lecturer on various aspects of special education and disability law, including serving as an adjunct professor of special education focusing on its legal processes, and remains active in numerous special education and legal professional organizations.

Few special educators and administrators would disagree that when a dispute over a child's special education program arises, amicable resolution reached by the parties is almost always better, for everyone involved, than going through a due process hearing. As a result, a number of early dispute resolution options have been made available in Pennsylvania and with great success. This article describes another new early dispute resolution service that the Office for Dispute Resolution (ODR) is currently offering called Evaluative Conciliation Conference (ECC).

Premise Behind ECC

The Individuals with Disabilities Education Act (IDEA) provides for several dispute resolution processes including state complaints, mediation and due process. However, several other informal options have also emerged across the country, and Pennsylvania is among those offering both Individualized Education Program (IEP)/Individual Family Service Plan (IFSP) Facilitation and Resolution

Meeting Facilitation in addition to the IDEA-mandated processes. Special educators and administrators and parents of children with disabilities, who are no strangers to collaboration, recognize the many benefits to early dispute resolution services such as these.

The advantages to resolving special education disputes early and collaboratively cannot be understated. Feinberg, Beyer & Moses (2002) explained that, "Early dispute resolution strategies not only help stakeholders avoid conflicts arising from mistrust and miscommunication, but also help resolve substantive disputes so that expensive and adversarial due process hearings or litigation can often be averted" (p. 26). The Consortium for Appropriate Dispute Resolution in Special Education [CADRE], n.d. has similarly observed that, through the end of the 2010-11 school year, states' use of more collaborative approaches to resolving special education disputes resulted in less use of the formal processes required by the IDEA, "leading to considerable fiscal savings, increased system efficiencies and improved relationships" (p. 1). Perhaps most importantly, parties who resolve their special education disputes in the early stages of disagreement are better able to focus their combined efforts on meeting the child's educational needs, rather than on participating in a formal and often lengthy due process hearing.

ECC was launched as a pilot project in the fall of 2012 in response to requests by constituents for an additional and different form of dispute resolution, and following consultation with key personnel in other states, stakeholder input and training for hearing officers and ODR staff.

The ECC Process

Although ECC was developed as a form of early dispute resolution, parties may take advantage of this option at any time. ECC is currently available for any case in which a due process hearing may be requested through ODR.

Because ECC is a voluntary process, both parties must agree to participate. Once the parties have decided to utilize ECC, they contact ODR to submit a request form and the matter is assigned to a consultant who is an experienced Pennsylvania hearing officer familiar with special education law and due process. The assigned consultant acts as an impartial third party, but in a role that is very different from that of deciding the issues in the case.

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The ECC is scheduled for a specific date that is convenient to both parties. Prior to the scheduled date, the consultant will request that each party submit a confidential memorandum outlining the issues as well as the parties' respective positions, and will review those memoranda and any other documents submitted, such as evaluation reports or IEPs. Individual conferences are then conducted on the scheduled date to provide the parties with a confidential and objective risk assessment of the parties' positions, including potential weaknesses that may not be apparent to those closest to the situation. In addition to this evaluation of the parties' respective positions on the issues, the consultant is able to provide a unique perspective on current interpretations of the law, as well as encouragement to explore creative solutions to resolve the disagreement without the need for a due process hearing. For confidentiality reasons, the consultant will not share confidential memoranda or the content of individual conferences with the other party or their counsel without express permission. If there is an active due process complaint, the presiding hearing officer is not provided with information about the parties' participation in ECC.

It is important to keep in mind that because ECC is an option outside of any statutory or regulatory authority, participation in the process does not automatically invoke the specific protections in the IDEA, although parties often are able to reach agreement on matters such as pendency during the process. ECC also does not delay the timelines set forth in the IDEA and related statutes and regulations. Depending on when it is requested, the ECC process can typically be conducted prior to the date a due process hearing is scheduled to begin and, it is hoped, serve to

foster focused settlement discussions that will obviate the need for the hearing.

Early Results and Outlook

The ECC process has generated a significant amount of interest among parties who have filed a request for a due process hearing or who are contemplating doing so. The ability to offer parties the informed perspective of an experienced special education hearing officer, without having to resort to a due process hearing, appears to be addressing a previously unmet need. From the time the pilot was launched, ODR has seen increased interest in and use of this new option, which the office expects will continue given current economic challenges faced by school districts and service providers.

Because each case is different, ECC can be a flexible process focused on meeting the needs of the parties in resolving their dispute. As might be expected, many of the issues that are commonly raised in a due process hearing are the same issues and concerns that are being presented through ECC and resolved in many instances, and ODR therefore anticipates a resulting overall reduction in the number of due process complaints filed and the number of cases which end with a hearing officer decision. Early results suggest that ECC has had success in assisting the parties reach amicable agreements in many cases.

Since the pilot project launched, ODR has actively sought evaluations of the process from those who have utilized it in order to determine the effectiveness of the program and whether changes may be necessary. ODR welcomes questions, comments and suggestions from those who are or may in the future be considering ECC.

Further Information

ODR has published an ECC Pilot Fact Sheet, a brochure and a set of Frequently Asked Questions about ECC, all of which are available on its website, www.odr-pa.org. Contact ODR for more information at odr@odr-pa.org. The author may be contacted at cskidmore@odr-pa.org.

References

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