



## Common Special Education Issues and Possible Action Steps

### Compliance with IDEA (student has or may be eligible for IEP)

- School failed to follow IEP (failed to provide agreed upon services) or failed to engage in required procedures (following timelines, issuing prior written notice, etc.)
- Options:
  - Request IEP meeting to discuss problems, ask for compensatory education or other [remedy](#)
  - Request [facilitated IEP meeting \(Spanish\)](#)
  - File a [State Complaint \(Spanish\)](#) – must be filed within 1 year of noncompliance; anyone with knowledge of an IDEA violation can file a state complaint

### Compliance with Section 504 (student has or may be eligible for 504 plan)

- School is failing to implement 504 plan as written
- Options:
  - Request a 504 plan team meeting
  - Contact district or charter 504 coordinator
  - File a complaint with the district or charter’s 504 coordinator or ombudsperson
  - File an [OCR complaint \(Spanish\)](#) – must be filed within 180 days of discriminatory act or 60 days of a decision from the school’s OCR investigator; anyone with knowledge of Section 504 violation can file an OCR complaint
  - File a lawsuit in federal district court (no requirement to file an administrative complaint first) – must be filed within 2 years of discriminatory act; ACDL recommends consulting with an attorney before filing

### Substantive Dispute IDEA (student has or may be eligible for IEP)

- Disagreement not related to procedures, not due to failure to follow IEP (e.g., disagreement about what should be in the IEP—eligibility, placement, services, result of manifestation determination, etc.)
- Options:
  - Request [facilitated IEP meeting \(Spanish\)](#)
  - Request [mediation \(Spanish\)](#)
  - File [due process complaint \(Spanish\)](#) – must be filed within 2 years of disputed decision. Due process is like filing a lawsuit, a lot of time and potential cost. We don’t advise filing until you fully understand the implications and are prepared. Only the student’s IDEA parent can file a due process complaint.

### Substantive Dispute Section 504

- Disagreement not related to procedures, not due to failure to follow 504 plan (e.g., disagreement about whether student needs a 504 plan, what should be in 504 plan, etc.).
- Same options as above, “Compliance with Section 504”

### Combination of Compliance and Substantive Disputes

- All options above for either IDEA or 504, whichever is applicable to the child

## Discrimination

- Child treated differently from other students on basis of disability, race, national origin, sex (e.g., student's parents required to chaperone field trip or else student will not be allowed to attend, whereas nondisabled students can attend even if their parents don't chaperone; teacher makes derogatory comments about child/child's disability in front of peers; child with disability segregated from peers unnecessarily, forced to eat lunch alone, etc.)
- Options:
  - Same options as above, "Compliance with Section 504"

## Restraint/Seclusion

- Restraint/seclusion of children in school is legal in Arizona when following [A.R.S. 15-105](#)
- If schools are not complying with A.R.S. 15-105, or if you believe the restraint/seclusion is excessive and is denying the student access to their education or is resulting in discrimination, may file an [OCR complaint \(Spanish\)](#). Must be filed within 180 days of the last act of restraint/seclusion. You may file a lawsuit in federal district court (no requirement to file an administrative complaint first) – must be filed within 2 years of discriminatory act; ACDL recommends consulting with an attorney before filing

## Abuse/Neglect

- An action/inaction by school staff that could be considered abuse/neglect (failing to change diaper for unreasonable amount of time, physically abusing child, failing to feed child, not investigating/responding appropriately to student-on-student abuse or harassment, etc.)
- Options:
  - Possible to use some of the options listed above if the action/inaction also constitutes a failure to follow an IEP/504 plan or discrimination.
    - For example, if the child's IEP states they will have their diaper changed twice a day and the school isn't doing that, it could be abuse/neglect but also is a failure to follow the IEP so a state complaint may be appropriate
    - If you think the student was abused/neglected because of disability, you may want to file an OCR complaint alleging discrimination on the basis of disability or consider filing a lawsuit in federal district court alleging violation of Section 504
  - Personal injury lawsuit—ACDL does not represent families in personal injury lawsuits. Contact your county or state bar association to try to find a personal injury lawyer. To file a personal injury suit against a public school, there is a requirement to file a Notice of Claim within 180 days of the injury. We recommend consulting with a personal injury lawyer as quickly as possible to ensure you do not miss the deadline for filing.

## Retaliation

- You believe the school is retaliating against you or your child because you engaged in a protected advocacy activity. For example, parent filed an OCR complaint and now the child is getting sent home early or suspended more often; parent requested an evaluation and now the school has started reporting parent to DCS (CPS) for normal bumps and bruises
- Options:
  - File an [OCR complaint \(Spanish\)](#) alleging retaliation. Must be filed within 180 days of the last act of retaliation
  - File a lawsuit in federal district court (no requirement to file an administrative complaint first) – must be filed within 2 years of discriminatory act; ACDL recommends consulting with an attorney before filing