



**NORTH CAROLINA CENTER FOR  
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**NEWS RELEASE**

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**Center Says North Carolina Needs to Improve Dispute Resolution Process in Special Education**

North Carolina's Office of Administrative Hearings (OAH) takes too long to resolve special education disputes, says the N.C. Center for Public Policy Research in a report released today in its journal, *North Carolina Insight*. The Center says that in 90 percent of cases in which a final decision is rendered, OAH takes longer than federal law intends in deciding due process hearings. Due process hearings, which pit parents of children with special needs against educators in disputes over how best to educate the child, are a form of civil litigation. The Center recommends a series of reforms that would prevent these kinds of lawsuits and lead to more timely resolution of disputes.

"The issues that come before the Office of Administrative Hearings are complex and emotionally charged, but the office needs to find a way to resolve these disputes more quickly," says *Insight* editor Mike McLaughlin. "They fall well short of the federal standard for timely resolution of special education disputes that result in due process hearings."

That parents and educators could end up suing each other over a special education placement may seem surprising, but not to those who are entangled in disputes about how best to serve children. Parents often complain that the schools do too little, while educators argue that parents expect too much.

"I have found that [regular classroom] teachers are not prepared to teach children with learning disabilities," notes one parent who asked not to be identified. "Our family has by now invested thousands of dollars in private learning consultants to help me understand the problem so that I could teach the teachers how to teach my child." But Raleigh attorney Ann Majestic, who represents local school systems, offers a different perspective. "Some of the things parents are demanding in the classroom are ridiculous -- one-on-one aides in every class, laptop computers, study guides before every test, retesting for every grade below a C. The problem with special education law is that there is no definition of 'appropriate.'"

In cases that end up in litigation, federal law envisions a final resolution within 45 days. The state's Office of Administrative Hearings meets this standard in only about 10 percent of its cases. There is no penalty for exceeding the 45-day standard, and extensions can be granted at the request of either party in the dispute. Due to the complexity of the cases and other factors, resolving these disputes often takes more than a year. Meanwhile, the child is held in his or her current educational placement until the dispute is resolved.

“Due process hearings are intended to protect the rights of the child, but sometimes the process goes awry,” says McLaughlin. “If an educational placement truly is inappropriate for the child, as parents often contend, a year spent in resolving the complaint is far too long. And most families can’t afford to pursue a year-long legal claim.”

Chief Administrative Law Judge Julian Mann, whose response to the Center’s research was reprinted in *Insight*, says that due process hearings are scheduled on a timely basis, but that lawyers for both parents and school systems often ask for extensions that delay a final decision. “The administrative law judge is routinely prepared to conduct the administrative hearing within the time requirement,” writes Mann. “The extensions have always been at the request of a party or their representatives and nearly always with the consent of both attorneys in the case.” Mann adds that strict adherence to the 45-day rule likely would result in poorly prepared lawyers and flawed decisions.

Yet these lingering legal battles invoke bitterness on both sides and may not be in the best interest of the child. Tom West, a former administrative law judge and now an attorney and mediator, observes, “When you hear one of these cases, it is painful to see the raw nerves caused by the case. With all the money spent in litigation, you think how many teachers could have been hired or mortgages paid.”

As a remedy, the Center recommends that: (1) the Office of Administrative Hearings meet the 45-day standard for deciding due process hearing disputes in the majority of its cases; and (2) the Superintendent of Public Instruction and the State Board of Education appoint a task force to develop a wider range of options for resolving special education disputes before they reach the litigation stage.

### **Delays Contrary to Intent of Federal Law**

The Center says that a process of resolving disputes that routinely goes beyond 45 days appears to be contrary to the intent of federal law and regulations. There are other consequences of the delays for parents and children. A process that is complex and lengthy is inaccessible to most parents due to the time and expense involved. In addition, the child’s education may be placed on hold while the hearing takes place. By law, the child must remain in his or her educational placement during the hearings unless the parties agree otherwise. Yet, the child’s needs often continue to change. The issues that caused the dispute may not even be relevant by the time the decision is rendered.

State and federal law define children with special needs as those ages 3-21 with a disability in one of 13 categories that qualify them for special services to pursue an education. Those categories are: autistic, behaviorally-emotionally disabled, deaf/blind, hearing impaired, mentally disabled, multi-disabled, orthopedically impaired, other health impaired, preschool developmentally delayed atypical, specific learning disabled, speech-language impaired, traumatic brain injured, and visually impaired. State law also grants special services to pregnant students.

### **Education Rights Expanded for Children With Disabilities**

The right to a free and appropriate public education for children with disabilities is of fairly recent vintage. Indeed, the 1965 General Assembly passed a law that took the opposite position. The old law



stated, "A child so severely afflicted by mental, emotional, or physical incapacity as to make it impossible for such a child to profit by instruction in the public schools shall not be permitted to attend the public schools of the state."

State law changed in 1974 to give every child with special needs the right to an education in the public schools. "No child shall be excluded from service and education for any reason whatsoever," says current state law. Federal law changed soon after North Carolina law. Today, every child has the right to a free and appropriate public education in the least restrictive environment possible for that child. This guarantee is spelled out in the federal Individuals with Disabilities Education Act (IDEA) and in corresponding state law.

The IDEA requires that certain conditions be met in order for states to receive federal funding. Under the laws, parents may challenge the identification, evaluation, educational placement, or provision of a free appropriate public education to a child. For example, a parent of a child with a learning disability might challenge the sufficiency or types of services provided to the child. Or a parent could seek to have a child with disabilities spend more time with non-disabled peers in the classroom and during non-instructional activities. Improvements in assistive technology such as special computer software and even simple devices to help hold peas on a fork are making broader participation in regular school activities possible for students with disabilities.

### **Formal Complaint Process Required**

Federal regulations require states to provide a formal complaint process as part of their activities for monitoring compliance. Parents have the right to due process hearings under certain circumstances when their complaints cannot be resolved by other means, and in North Carolina, those hearings are conducted by the Office of Administrative Hearings. More than six times as many requests for due process hearings were filed in 1997 as in 1989, with 74 requests out of a population of 159,697 students. However, Durham County alone accounted for more than a third of the 74 cases in 1997. The Durham County cases have since been settled.

Research by the N.C. Center for Public Policy Research shows that since 1992, almost eight of every 10 cases have been resolved before a decision is made by an administrative law judge. The majority (57 percent) of the cases resolved before a decision are withdrawn, voluntarily dismissed, or dismissed by an administrative law judge as deficient in some respect; an additional 21 percent are settled outside the courtroom or through a consent order. A final decision is rendered in the remaining 22 percent of the cases. Although these decisions can be appealed, most are not. Of 39 final decisions rendered from 1992 to 1997, only 12 were appealed for further review. Some 30 percent of the cases have taken more than a year to decide.

In addition to due process hearings, parents may use a formal complaint process within the N.C. Department of Public Instruction to address some of their concerns. The Center says the department has a solid track record in resolving these complaints on a timely basis. The number of formal complaints filed with this department over the past five years has ranged from 59 in 1993-94 to 43 in 1997-98. A decision on a submitted complaint must be reached within 60 days, unless there are exceptional circumstances. The Department of Public Instruction usually meets or just misses the 60-day requirement. In the 1996-97 fiscal

year, for example, 30 of 49 cases (61 percent) were resolved within the 60-day time limit, while 35 of 49 (71 percent) were resolved within 70 days.

### **Needed: A Continuum of Dispute Resolution Processes**

To broaden the range of options for resolving special education disputes, the Center recommends a more fully developed continuum of opportunities for settling differences of opinion short of litigation. One promising means of resolving disputes is **mediation**. In a study conducted for the U.S. Department of Education, at least seven states that collect data on mediation programs -- Arizona, California, Colorado, Illinois, Massachusetts, Minnesota, and Vermont -- reported conflict resolution rates of 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.

Federal law requires the state to maintain a list of qualified and trained mediators. More than 50 mediators have been trained by the N.C. Department of Public Instruction and the Institute of Government at the University of North Carolina at Chapel Hill. In April 1998, the Department of Public Instruction notified local school districts that these mediators are available. However, thus far no information has been collected on the use of the new mediation process or its effectiveness.

Some state departments of education aggressively advocate the use of informal dispute resolution such as mediation. These include Michigan and Illinois, which has trained mediators on staff. In North Carolina's New Hanover County, mediation has been used a half-dozen times in the past seven years to avoid potential administrative hearings. "It's successful because it values the interests of all parties and tries to bring those interests together in a similar direction," says Bill Trant, special education director for the New Hanover County Public Schools. With mediation, says Trant, both sides win.

Communication between parents and educators is key to avoiding disputes and resolving them quickly once they occur. A program that has worked effectively in the San Diego Schools is the deployment of **parent facilitators**. The program hires parents of special needs children and gives them extensive training. Facilitators help parents find resources, communicate with parents with similar issues and concerns, and provide information about rights and the educational process. They also accompany parents to meetings to discuss the child's education plan.

Yet another option that prevents special education disputes is **conflict resolution training**. In Michigan, the Community Dispute Resolution Program and the Special Education Mediation Program regularly provide training on conflict resolution. In North Carolina, all special education directors in the state have received mediation training. In addition, Lee County and other school districts provide training for staff. However, currently there is no organization providing training to parents and staff on a systematic basis in North Carolina.

Other dispute resolution techniques uncovered by the Center's research include: the use of **neutral facilitators** to help participants overcome poor communications; **impartial review**, where knowledgeable professionals spend a day or two on site and provide a non-binding second opinion on the issues in



controversy; and **non-binding or binding arbitration**, which can work like a miniature trial with limited records and testimony.

### **Center Recommendations**

To improve the state's performance in resolving special education disputes, the N.C. Center for Public Policy Research recommends:

(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 by 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.

(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 by the year 2000 toward the development of a continuum of dispute processes in North Carolina. This would possibly include such options as parent facilitation, mediation, impartial review, and binding or non-binding arbitration. The goal of the continuum to be developed by this task force would be to reduce the number of disputes by providing more opportunities to resolve conflicts before they reach the litigation stage. While individual school districts may provide conflict resolution training or may seek arbitration, the Center says North Carolina needs to offer a variety of approaches to preventing or resolving disputes.

The N.C. Center for Public Policy Research is an independent, nonpartisan, nonprofit corporation created to study public issues facing North Carolina and to evaluate state government programs. The Center's research on children with special needs was supported by a grant from the Glaxo Wellcome Foundation. The Foundation was formed in 1986 by Glaxo Wellcome Inc., a pharmaceutical research company with U.S. headquarters at Research Triangle Park, N.C. The Center receives general operating support from the Z. Smith Reynolds Foundation, 14 other foundations, 190 corporate contributors, and almost 1,000 individual and organizational members across the state. In addition to publishing *North Carolina Insight*, the Center publishes book-length research reports, a citizens' guide to the legislature, and a textbook for teachers of state and local government. The Center currently is studying higher education governance in North Carolina and recently has examined rural economic development, state job training programs, and year-round schools.

Copies of the issue of *North Carolina Insight* containing the Center's research on funding for children with special needs in North Carolina are available for \$20, which includes tax, postage, and handling. To order, write the Center at P.O. Box 430, Raleigh, N.C. 27602, call (919) 832-2839, fax (919) 832-2847, or order through the Center's Website at [www.nando.net/insider/nccppr](http://www.nando.net/insider/nccppr).

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For more information on the Center's research on the state's record in resolving disputes in special education, contact Mike McLaughlin, editor of *North Carolina Insight*, at (919) 832-2839.

**Table 2. Due Process Hearing Requests in North Carolina Public Schools By Year, 1989-1997**

| Year | Cases Filed | Special Education Population in N.C. Public Schools |
|------|-------------|-----------------------------------------------------|
| 1989 | 12          | 116,556                                             |
| 1990 | 6           | 120,434                                             |
| 1991 | 2           | 125,364                                             |
| 1992 | 17          | 130,599                                             |
| 1993 | 25          | 135,087                                             |
| 1994 | 28          | 139,803                                             |
| 1995 | 31          | 147,313                                             |
| 1996 | 48          | 152,819                                             |
| 1997 | 74          | 159,697                                             |

Source: N.C. Office of Administrative Hearings for numbers of cases, N.C. Department of Public Instruction for special education populations.

**Table 4. Resolution of N.C. Special Education Disputes, 1992-1997**

| How Cases Are Resolved                                                     | Number | Percentage* |
|----------------------------------------------------------------------------|--------|-------------|
| Withdrawn, dismissed voluntarily, or dismissed by Administrative Law Judge | 104    | 57%         |
| Settled or consent order                                                   | 39     | 21          |
| Final decision by Administrative Law Judge                                 | 39     | 21          |
|                                                                            | 182    |             |

\*Percentages do not total 100 due to rounding.

**Table 5. Time Required To Decide N.C. Disputes, 1992-1997**

| Length of Time  | Final Decisions Not Appealed | Final Decisions Appealed | Total | Percentage of Total* |
|-----------------|------------------------------|--------------------------|-------|----------------------|
| Up to 45 days*  | 4                            | 0                        | 4     | 10%                  |
| 46 to 90 days   | 7                            | 1                        | 8     | 21                   |
| 91 to 180 days  | 4                            | 2                        | 6     | 15                   |
| 180 to 365 days | 7                            | 2                        | 9     | 23                   |
| Over 365 days   | 5                            | 7                        | 12    | 31                   |

\* Federal law requires decisions to be made within 45 days.

Source: N.C. Office of Administrative Hearings, Raleigh, N.C.

**Table 3. Number of Due Process Hearing Requests Filed in Public Schools in the U.S., 1992-1995**

| Year    | Hearings Requested | Growth in Number of Hearings Over Prior Year | Percent Increase | Number of States with Increase | Number of States with Decrease | States Remaining the Same |
|---------|--------------------|----------------------------------------------|------------------|--------------------------------|--------------------------------|---------------------------|
| 1992    | 4,323              | 198                                          | 4.8%             | 29                             | 16                             | 0                         |
| 1993    | 4,781              | 458                                          | 10.6             | 24                             | 22                             | 0                         |
| 1994    | 5,321              | 540                                          | 11.3             | 36                             | 5                              | 4                         |
| 1995    | 5,497              | 176                                          | 3.3              | 27                             | 18                             | 2                         |
| Average | 4,981              | 343                                          | 7.5              | 29                             | 15                             | 1.5                       |

Source: Due Process Hearings: An Update, National Association of State Directors of Special Education, Alexandria, Va., 1997. Number of states does not add to 50 due to incomplete reporting.

**Table 8. Formal Complaints  
to the N.C. Department  
of Public Instruction,  
1993-94 to 1997-98**

| School Year | Number of Formal<br>Complaints |
|-------------|--------------------------------|
| 1993-94     | 59                             |
| 1994-95     | 52                             |
| 1995-96     | 45                             |
| 1996-97     | 49                             |
| 1997-98     | 43                             |

*Source:* N.C. Office of Administrative  
Hearings, Raleigh, N.C.

**Table 9. Time Spent in Resolving Formal Complaints to the  
N.C. Department of Public Instruction, 1996-97 to 1997-98**

| School Year | 60 days or less* | Within 70 days | Extension Given | Complaint Removed** | Total |
|-------------|------------------|----------------|-----------------|---------------------|-------|
| 1996-97     | 30               | 5              | 9               | 5                   | 49    |
| 1997-98***  | 14               | 6              | 5               | 2                   | 27    |

\* Law requires a decision within 60 days.

\*\* Includes circumstances where a due process request was also filed, the complaint was withdrawn, or the complaint was suspended pending investigation by the U.S. Office of Civil Rights.

\*\*\* Includes only complaints which required a response by May 27, 1998.

*Source:* N.C. Office of Administrative Hearings, Raleigh, N.C.