

EDUCATION DISPUTE RESOLUTION WORKING GROUP

FINAL RECOMMENDATIONS



143 W. Washington Street, Suite 500
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EDUCATION DISPUTE RESOLUTION WORKING GROUP

2019

Membership Roster

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Member-Indiana State Board of Education

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EDUCATION DISPUTE RESOLUTION WORKING GROUP

I. LEGISLATIVE DIRECTIVE

The Education Dispute Resolution Working Group (“EDR Working Group”) was established by Indiana Code 20-19-2-22.5. The EDR Working Group was tasked with submitting final recommendations to the Indiana Department of Education (“Department”), the Indiana State Board of Education (“Board”), and the Indiana General Assembly (“IGA”). *See* IC 20-19-2-22.5(g).

Per I.C. 20-19-2-22.5(g), the EDR Working Group discussed, among other topics, the following:

- (1) The complaint and investigation requirements set forth in 511 IAC 7-45-1 that could reduce costs to school corporations and parents of students with disabilities.
- (2) The recruitment, training, and payment of administrative law judges or hearing officers.
- (3) A system of access to low cost legal advocacy regarding educational disputes that encourages efficient resolution of disputes and does not incentivize protraction.
- (4) Implications to the receipt of federal funding regarding changes made to 511 IAC 7.
- (5) Information and communication strategies to parents of students with disabilities and school corporations for resolving disputes concerning special education issues.
- (6) Patterns of complaints that emerge regarding special education rights and services, in order for the department to develop strategies to better resolve issues that lead to a particular pattern of complaints.
- (7) Appropriateness of nondisclosure agreements in settlements involving special education and public schools.
- (8) Whether the department shall establish a special education board of appeals to review administrative hearings or findings.
- (9) Whether a dispute resolution ombudsman within the department would reduce costs relating to legal advocacy and facilitate more efficient resolution of disputes.

II. SUMMARY OF EDR WORKING GROUP MEETINGS

The EDR Working Group met six (6) times over the course of four (4) months. The meetings were held in Indianapolis at the Indiana Government Center South and the House Chamber in the Indiana State House. Public comments were accepted at each of the six (6) meetings, with 16 individuals offering public comments for the group's consideration over the course of the six meetings.

At the meeting on July 25, 2019, the EDR Working Group discussed the following topics:

1. EDR Working Group meeting conduct expectations and norms;
2. The EDR Working Group's legislative charge; and
3. The Department's Cost of Educational Disputes Report.

At the meeting on August 8, 2019, the EDR Working Group discussed the following topics:

1. Patterns of complaints that emerge regarding special education rights and services; and
2. Policy Discussion—Special Education Directors' Experiences Preventing and Responding To Requests for Due Process Hearings:
 - a. What leadership actions did special education directors take to increase cooperation and mitigate conflict between families and schools?
 - b. What were the experiences of special education directors after receiving requests for due process hearings?

At the meeting on August 22, 2019, the EDR Working Group discussed the following topics:

1. Training hearing officers and related topics; and
2. The parent/family perspective.

At the meeting on September 19, 2019, the EDR Working Group discussed the following topics:

1. The School Corporation Perspective—representing school corporations in dispute resolution matters;
2. The Parent/Guardian Perspective—representing parents/guardians in dispute resolution matters; and
3. Independent Hearing Officer Perspective—overseeing the dispute resolution process.

At the meeting on October 3, 2019, the EDR Working Group discussed the draft recommendations, including edits, revisions, and other proposed changes.

At the meeting on October 22, 2019, the EDR Working Group discussed and approved its final recommendations.

The minutes, exhibits, and videos may be accessed at:

<https://www.in.gov/sboe/2486.htm>

III. EDR WORKING GROUP RECOMMENDATIONS

The EDR Working Group considered and approved the following recommendations:

Recommendation 1: Funding

The EDR Working Group recommends that to the extent any of the recommendations contained in this document are adopted by the Indiana General Assembly, any funding deemed necessary for the implementation not be derived from state or federal funds already dedicated to any special education program.

Recommendation 2: Enhanced Mediator and Independent Hearing Officer Training and Evaluation

The EDR Working Group recommends enhanced mediator and Independent Hearing Officer (“IHO”) training and evaluation. This enhanced training should include, but is not limited to:

- The Department should develop a permanent database that contains all administrative decisions, procedures, and other resources that mediators/IHOs will have access to perform their respective responsibilities;
- Regular mediator/IHO gatherings, organized by the Department, to facilitate discussions aimed at sharing techniques and other ideas for improved services;
- The Department should develop and implement guidelines for written evaluations of mediators and IHOs. The evaluation components should include, but not be limited to, specific benchmarks such as timely legal guardian/school corporation contact and case completion metrics;
- The Department should review and increase the hourly rate for IHOs, and review total compensation for mediators and IHOs; and
- The Department should develop enhanced training that ensures that IHOs and mediators are effectively cross-trained to serve as both mediators and IHOs.

Recommendation 3: Facilitated Individualized Education Plan (“IEP”) Program

The EDR Working Group recommends that the Department continue funding the facilitated Individualized Education Plan (“IEP”) system.

Recommendation 4: Survey Program

The EDR Working Group recommends that the Chair of the committee appoint a subcommittee, the membership to draw from current members of the EDR Working Group, to study the development of a robust dispute resolution survey program. The subcommittee shall also develop a proposed system to utilize any resulting data from the proposed survey program. The subcommittee shall submit its results to the EDR Working Group Chair, who will determine the appropriate next steps. The subcommittee's report shall be delivered by the end of May, 2020.

Recommendation 5: Consistent Delivery of Resources to Legal Guardians and School Corporations

The EDR Working Group recommends that the Department develop a centralized "clearing house" of tools and resources relevant to the CCC, IEP, mediation, and post-complaint/due process procedures. The "clearing house" would operate as the state's primary resource center, with active participation from outside organizations, which is dedicated to increasing parent and school corporation (administrators, teachers, etc.) awareness of available resources and rights. All resources and tools associated with any "clearing house" would be available free of charge.

It is expected that part of developing an effective resource center will include conducting an inventory of existing resources and a determination of what new resources should be created (*e.g.*, training videos, FAQs, etc.).

The EDR Working Group recommends that the State maintain and consider additional funding for IN*SOURCE to support the training and individual assistance of parents and professionals involved in special education.

Recommendation 6: Indiana Disability Rights

The EDR Working Group recommends state funding for the Indiana Disability Rights organization (the service arm of the Indiana Protection and Advocacy Services (IPAS) Commission), which will allow the organization to extend its legal advocacy services to legal guardians at earlier stages of potential dispute resolution process. State funding of at least \$250,000 would allow Indiana Disability Rights to hire two full-time education advocates and a full-time education attorney, who will oversee the expanded legal advocacy work of the education advocates across the state. This would additionally fund Indiana Disability Rights to properly promote the availability of its no-cost legal advocacy services for students with disabilities and their legal guardians. The agency's goal will continue to be advocating for appropriate educational services for their clients while attempting to resolve educational disputes at the earliest stage.

Recommendation 7: 2nd Tier Administrative Decision Review

The EDR Working Group recommends that the Chair of the committee appoint a subcommittee, the membership to include current members of the EDR Working Group, to study the development of, and need for, an administrative appeal process that reviews IHO findings if either party requests such a review. The subcommittee shall submit its results to the EDR Working Group Chair, who will determine the appropriate next steps to facilitate the possible creation of an administrative review process. The subcommittees report shall be delivered by the end of May, 2020.

Recommendation 8: Non-Disclosure Agreements

The EDR Working Group recommends that the interim study committee on education study the appropriateness of nondisclosure agreements in settlements involving special education dispute resolution matters.

Recommendation 9: Future EDR Working Group Meetings

The EDR Working Group recommends that the Chairperson of the EDR Workgroup shall have the discretion to call a meeting of the EDR Workgroup if the Chairperson deems it appropriate based on the issues outlined in HEA 1629 or at the request of a majority of the membership.

PUBLIC COMMENT LIST

Kristy Cundiff; Andrew Manna; Erin Moon-Walker (twice); Pat Howey (twice); Cheryl Clemens; Margaret Jones; Pam Cleary; Karen Glasser Sharp; Patty LeSueur (twice); Tom Blessing; Lisa Wells; Jane Winkoff; Heather Paskis; John Hunter; Stephanie Slone (twice); and Carter Slone.