Appendix 13

Appendix Contents

Attachment A. Making Good Choices: Opportunities for Resolving Conflict

SPECIAL EDUCATION
IN
IDAHO

Making Good Choices: Opportunities for Resolving Conflict

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Introduction

Special education and related services provide students with disabilities an education designed to meet their unique needs and to prepare them for further education, employment, and independent living.

Anyone may refer a student for special education. Once the student is referred, parents begin to participate with the school in a unique and challenging process to determine how their child should be educated.

For a student with a disability, the Individualized Education Program (IEP) process includes identification, evaluation, placement, and the provision of a free appropriate public education (FAPE).

In order for the IEP process to work efficiently and effectively, communication among the IEP team members is essential. Parents are important members of the IEP team. They hold special knowledge about their child and are encouraged to share that information, actively participating in the development of the student's IEP. Good school-home partnering results in an appropriate educational program that meets the student's unique needs.

Parents should always consider first speaking to the classroom teacher, special education teacher, or building principal if there are any questions about the education of their child.

Most of the time a parent's concerns can be addressed by communicating with school district staff involved in the education of their child. The parent, like any other IEP team member, can request that an IEP team meeting be held.

Choices

When parents have questions or concerns about their child's education, it is important to resolve these concerns as soon as possible by contacting the child's classroom teacher, special education teacher, or principal. At any time, if the student's IEP needs to be changed, any member of the IEP team may request an additional IEP meeting. Most of the time, problems are resolved at this level.

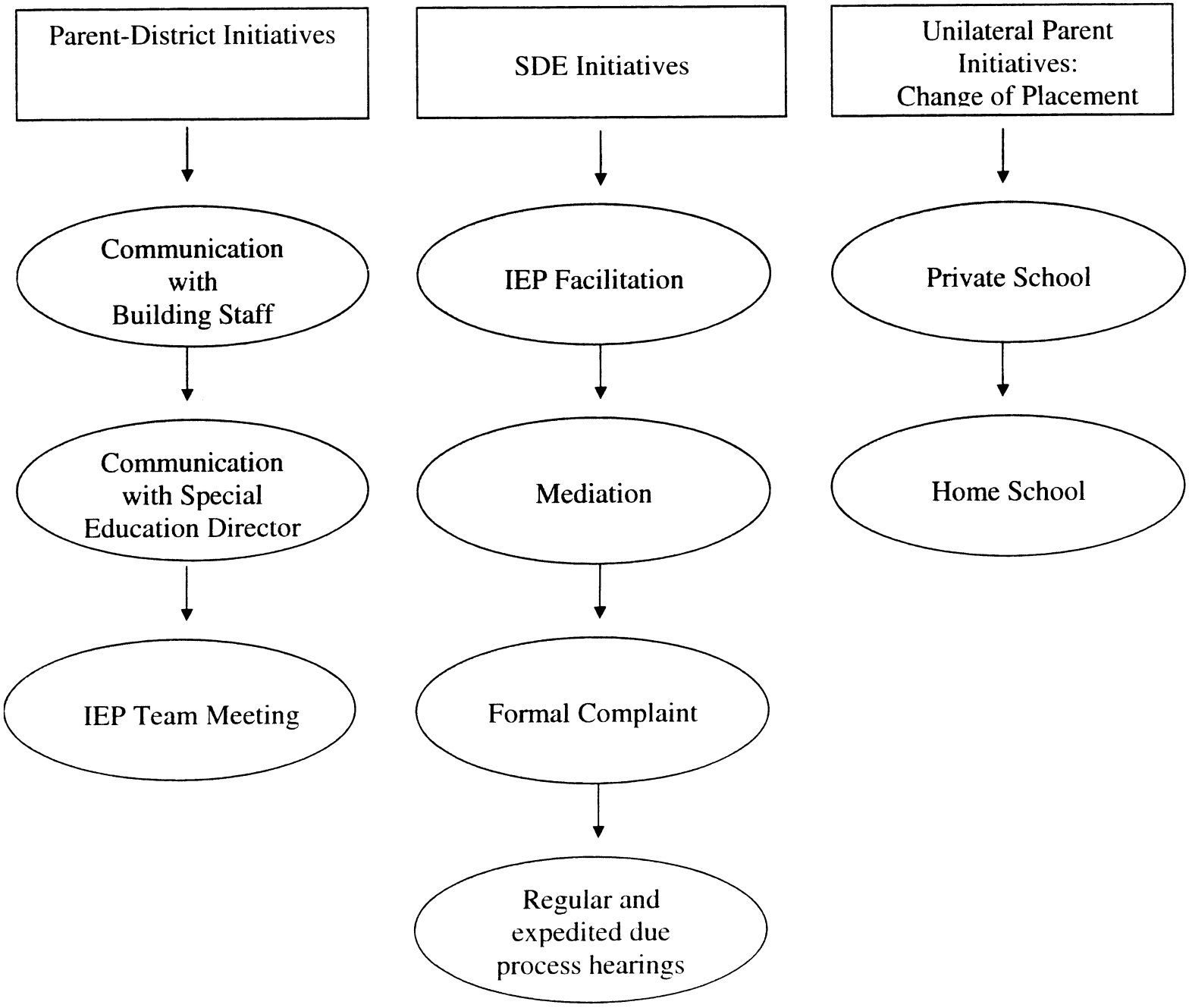
Even though both parents and school staff members intend to communicate openly and work as partners, occasionally conflict occurs. Conflict is a natural part of life

brought on by our different beliefs, experiences, and values. If not managed carefully, however, conflict can harm relationships, diverting attention from the most important thing: the education of the child.

A variety of choices are available to parents to continue to focus on the education of their child. Three types of initiatives are available:

(1) Parent - District; (2) State Department of Education (SDE); and
(3) Unilateral Parental

Diagram of Choices



I. Parent – District Initiatives

Most parents and district personnel are able to work together in a partnership that usually results in meeting the educational, social, and behavioral needs of the student. These ventures are successful because there is open communication between the parties. If an issue arises which causes concern, the parent may contact the student's general education teacher, special education teacher, or case manager assigned to the student, and if these efforts fail, contact the building principal.

Parents at any time may request that an IEP team meeting be held to address any issues that need to be discussed. On most occasions, the district is willing and able to schedule an IEP team meeting at a time convenient to all parties. If all efforts fail to adequately address the issues at hand, additional options are available.

II. State Department of Education Initiatives

There are two types of SDE processes available. The first type is informal, which includes IEP facilitation and mediation.

Note: The purpose of these processes is to promote clear communication and positive relationships as informally and in as relaxed an atmosphere as possible. Although not prohibited, attorneys are strongly discouraged from participating in IEP facilitation and mediation. Their experience in the adversarial process can promote unnecessary conflict, an atmosphere of tension, and unreasonable demands, which are contrary to the goals of these informal processes.

Formal processes are the second type. These include formal complaints and regular and expedited due process hearings. These processes tend to be more adversarial.

The following chart compares the informal (IEP facilitation and mediation) and formal (formal complaints and due process hearings) are available through the SDE:

Comparison of SDE Dispute Resolution Opportunities

IEP Facilitation	Mediation	Complaint	Impartial Due Process Hearing
Oral and written requests accepted	Oral and written requests accepted	Only written requests with signature accepted (e-mail requests not acceptable)	Only written requests with signature accepted (e-mail requests not acceptable)
Non-adversarial	Non-adversarial	Adversarial	Adversarial
Informal	Informal	Formal	Formal
Confidential	Confidential	Confidential	Confidential
No cost to parties	No cost to parties	No cost to parties	Costly for schools/parents
Includes a legally constituted IEP Team	Up to three people on either side	As determined by the investigator	No limits on participants
One or more hours May take more than one IEP team meeting.	Takes less than a day Efforts made to complete entire process within 21 days	May take several weeks Investigation must be completed within 60 days with a final written report	Hearing may require several days. Decision must be issued within 75 days of the request.
Supports open, direct communication	Supports open, direct communication	Communication with investigator	Hearing Officer controls communication
Agreements made by IEP Team	Agreements made jointly by parents and district	Any corrective actions determined by SDE	Law-based decision
If unsuccessful, either party may pursue other resolution alternatives	If unsuccessful, either party may pursue other resolution alternatives	Currently no formal appeal	Decision is binding, but may be appealed to state or federal court

INFORMAL PROCESSES

IEP Facilitation

The SDE offers the IEP team a neutral third party to encourage communication, participation, and problem solving by all team members.

Facilitation is available from the SDE at no cost. Both parties must agree to participate. Either the parent or the district can request facilitation, but should give the SDE a reasonable amount of time to appoint a facilitator.

A facilitated IEP team meeting is scheduled by the district and the parent at a mutually agreed upon time and place.

A trained facilitator is appointed by the SDE Dispute Resolution Coordinator.

The facilitator will assist in developing the topics for discussion, set the agenda, insure active participation, and guide the IEP team toward a successful conclusion.

In Idaho, IEP facilitation has been highly successful.

The parties will be asked by the SDE to evaluate the facilitation.

Mediation

Mediation is a structured, yet informal voluntary process, wherein a neutral third party is appointed by the SDE to mediate a conflict between parents and a district.

Mutual agreement by parents and school to mediate
Economically sound choice for both parties
Decisions are made by the participants
Individuals appointed are trained, experienced mediators and have knowledge of special education law
Actions are jointly discussed and determined
Time needed for the process takes less than a day
Identifies the student's educational needs
Open communication is the key to reaching a written agreement
Neutral third party serves as the mediator

Mediation differs from IEP facilitation in two ways:

1. The mediation is not an IEP team meeting.

2. The number of participants are limited to three for each side.

A mediator is a neutral third party trained in communication, problem solving, and negotiation to help the parents and the district reach a satisfactory resolution.

Consider the mediator as a guest at the negotiation. The mediator guides the parties to think differently about their relationship and to focus on the education of the student.

The mediator is appointed by the SDE from a list of highly qualified mediators. The appointment is made within 3 days from the parties' agreement to mediate.

The mediator is responsible for the process and may meet with parents and the district individually, in a meeting known as a caucus.

Mediation offers the parents and the district an opportunity to confidentially discuss the education of the student and to have ownership in reaching an agreement.

Preparing for IEP Facilitation or Mediation

* Schedule enough time for facilitation or mediation.

* Put aside personality conflicts and focus on the educational interests of the student.

* Be familiar with all documents, most importantly the IEP.

* Organize information and materials.

* Be open and willing to listen.

* Be open to alternatives.

FORMAL PROCESSES

Complaint Investigation

Anyone may file an Individuals with Disabilities Education Improvement Act (IDEA) complaint against a school district.

A formal complaint must be filed with the SDE in writing, signed by the person making the complaint, and include identifying information about the person making the complaint (the complainant) and the student.

A person filing a complaint may write a letter or use the Formal Complaint Form available from the SDE, the district, and is contained in the Idaho Special Education Manual.

The complaint must allege that the district violated the IDEA. In order for the SDE to accept the complaint, supporting facts must be supplied for each allegation. The complaint must be brought within two years of the alleged action(s).

The SDE will review the complaint to determine if an investigation is warranted. If an investigation is not accepted, the SDE will notify the complainant within 30 days.

If the complaint is accepted, it must be resolved within 60 days of receipt by the SDE.

The district and the complainant will be notified in writing of the allegations accepted for investigation.

Several options may be used by the SDE to resolve a complaint. These include:

1. Accepting documentation by the district verifying that the allegation is unsupported.

2. Accepting or negotiating a Corrective Action Plan proposed by the district and approved by the SDE.

3. Participating in an Early Complaint Resolution meeting proposed and facilitated by the SDE involving the complainant and the district to immediately resolve the allegations.

4. Conducting a full investigation.

Note: One or more of the ways described above can be used in any given complaint.

Either the Dispute Resolution Coordinator or a SDE contracted complaint investigator will conduct the investigation. On occasion, two investigators may be assigned to a complaint.

The role of the investigator is to make factual findings, draw conclusions, and require corrective action(s), if necessary.

The investigator conducts interviews, gathers and verifies facts, and reviews the student file, as well as other related documents.

A Final Report will be prepared by the investigator(s) and provided to the parent and the district.

Regular Due Process Hearing

A request for a due process hearing is initiated in writing by a parent or school district.

A Due Process Hearing Request Form is available from the SDE, from the district, or from the Idaho Special Education Manual.

A due process hearing request must be made within two years of the action or disputed decision affecting identification, evaluation, educational placement, or the provision of FAPE.

Once a request for a hearing has been made, the SDE must appoint a hearing officer within 10 days.

The student will be required to stay put in the current educational placement unless the parties agree to a change in placement or a change in placement is ordered by the hearing officer.

The hearing officer will schedule a pre-hearing conference to advise the parties of the procedure, answer questions, and notify the parties of the date, time, and place of the hearing.

The school district will provide reasonable accommodations for the hearing participants, if requested.

The party who did not make the request for a hearing may object in writing to the content of the request for a hearing and the hearing officer must rule on that objection.

A Resolution Session (RS) will be held within 15 days of receipt of the request of hearing, unless the parties agree in writing to waive the RS.

If both parties agree, the SDE is willing to provide the services of a trained IEP facilitator to conduct the RS.

If the parties do not reach an agreement in the RS, the SDE will offer mediation at no charge to the parties. Both parties must agree to mediate for this step to occur.

The parties may be represented by an attorney or represent themselves. However, an advocate may not appear for a parent in a due process hearing.

Parents have the right to inspect, review, and receive copies of the district's records.

The documents to be considered by the hearing officer are to be disclosed five days prior to the hearing.

The hearing officer will conduct the hearing according to the Idaho Administrative Procedures Act and IDEA.

The process is formal and adversarial.

A hearing open to the public may be available.

Witnesses will be called and cross examined. Exhibits will be introduced and arguments presented.

The Hearing Officer's decision is:

1. Rendered within 45 days.
2. Based on the record of the hearing.
3. Written to include findings of fact and conclusion of law.
4. Final.

The hearing officer's decision may grant some, all or none of the relief requested.

Decisions can be appealed to state or federal court within 28 days.

A record of the hearing will be made and a transcript will be available to the parents, district, and the SDE.

Expedited Due Process Hearing

An Expedited Due Process Hearing can be requested to address disciplinary issues.

The timelines are shorter than a regular Due Process Hearing.

A RS and mediation are available.

A hearing is held within 20 school days of the request. The hearing officer's decision is made within 10 school days of the hearing and is based on findings of fact and conclusions of law.

Reminders:

- **When a hearing has been requested by either the parent/adult student or the district regarding placement decisions, the student must "stay put" for the duration of the hearing.**
- **Only a court and not a hearing officer, may award attorney fees.**

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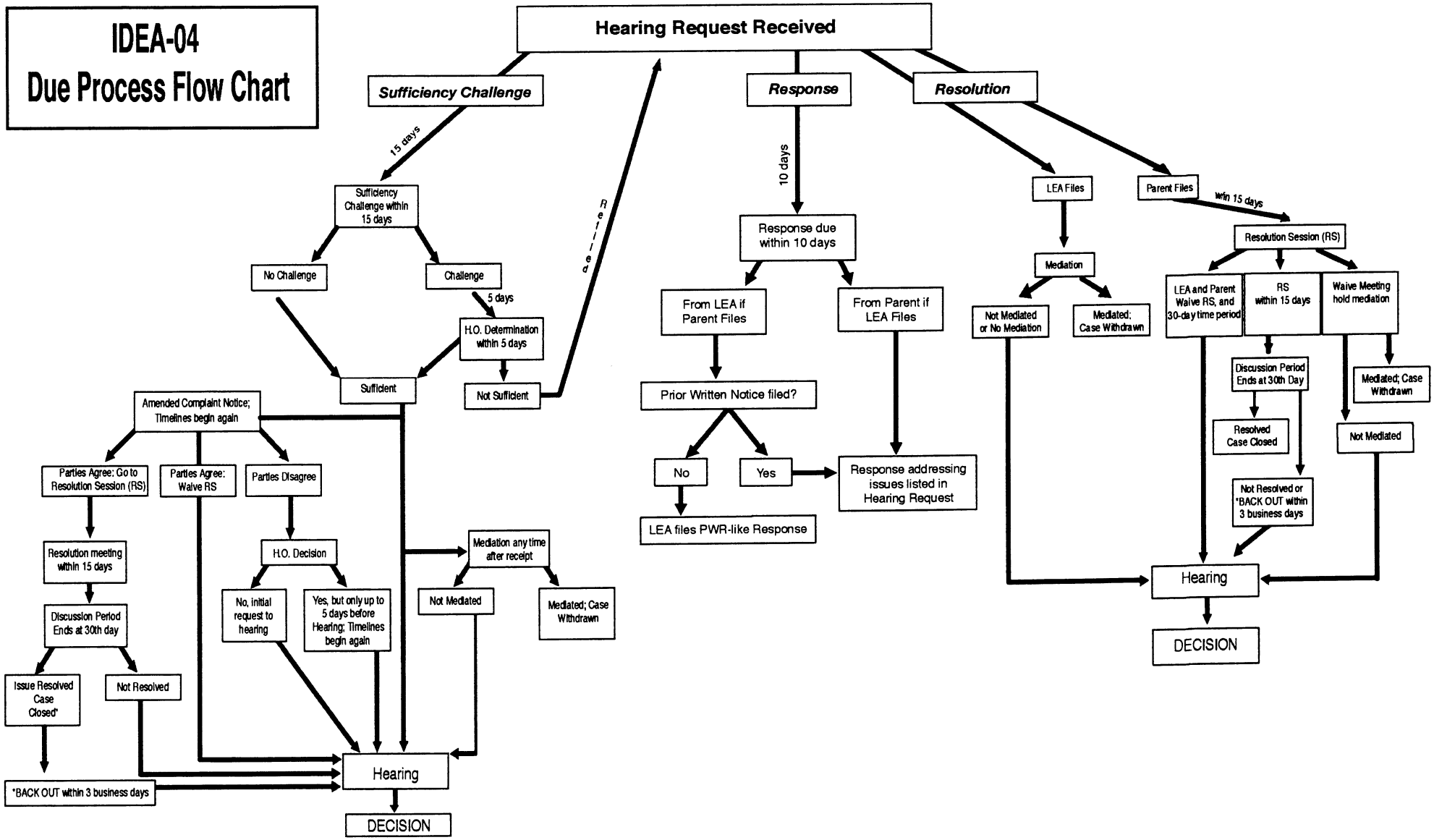
Due Process Flow Chart



III. Unilateral Parental Initiatives

Parents are not required to participate in any dispute resolution opportunities.

Parents can choose to:

1. Home school their child; or
2. Place the student in a private school; or
3. Enroll the student in an electronic educational program.

Summary

Building partnerships is not always easy. While there are a range of opportunities for resolving conflicts, parents and district staff working together can focus on the student's education. Good communication equals positive results and outcomes for the student.

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