

Position Paper of The Arc of Pennsylvania
Regarding Independence of Office for Dispute Resolution

Approved January 28, 2006

Background

The Commonwealth of Pennsylvania maintains a two-tier system for the adjudication of special education matters. Under this system, a local hearing officer acts as the independent, first-tier fact-finder who conducts an evidentiary hearing held in the local school district. Following the decision of the Hearing Officer, one or both parties may appeal the decision to the second tier of the process which consists of a panel of three appellate, state-level hearing officers.

Because IDEA requires that hearing officers be independent of local educational agencies (at the first level of due process) and state educational agencies (at the second level of due process) it is necessary that the Commonwealth maintain an administrative entity with sufficient independence and neutrality to manage the selection, training, and assignment of hearing officers. In the three decades that the special education due process system has been in place, an agency funded and largely controlled by the Pennsylvania Department of Education has provided most of these services. This agency is currently known as the Office for Dispute Resolution, although the agency has been known by different names in the past.

Issues

The Office for Dispute Resolution is funded through the Pennsylvania Department of Education and historically has been housed in, and managed by, an Intermediate Unit near Harrisburg, Pennsylvania. The Arc of Pennsylvania and other family advocates have become concerned over the past several years regarding the neutrality of the Office for Dispute Resolution and its decline in independence from Pennsylvania Department of Education. The nature of these concerns is set forth below, and some proposed solutions are described.

- *Interference in Personnel Matters:* The Arc of Pennsylvania and other family advocates have concluded that observers that the Pennsylvania Department of Education views the Office for Dispute Resolution as an agency fully within its control and direction. We have learned that high-ranking officials of PDE have routinely contacted supervisory staff at ODR to identify particular expectations of PDE concerning the employment of hearing officers and the policies to be employed by ODR. We believe that high-ranking officials of PDE have insisted, successfully, that certain hearing officers be removed from service despite lengthy, productive and respected careers. While hearing officers with perceived contacts with parents of disabled children have been removed for purported conflicts of interest, we understand that other hearing officers who work for, and receive weekly paychecks from, School Districts or Intermediate Units remain as hearing officers through the influence of PDE. These observations raise serious questions about the independence of ODR.
- *Bias in Favor of School Districts:* ODR representatives appear to believe that they must obtain approval from PDE for significant administrative actions. As well, over the past several years, The Arc of Pennsylvania has increasingly observed that federally-mandated training sessions of hearing officers and ODR staff are heavily weighted

toward the perspectives of school districts, as these training sessions have become overwhelmingly presented by public education officials, including PDE representatives and school district attorneys, rather than by balanced panels or outside lecturers who possess a neutral approach with no agenda.

Furthermore, although the Pennsylvania Special Education Appeals Panel are theoretically required to receive additional evidence under the Individuals with Disabilities Act, no appeals Panel has ever conducted an evidentiary hearing in the fourteen (14)-year history of the Panels. This failure blocks families from introducing additional expert evidence documenting their child's needs. These biases in training and procedures undermine the fundamental due process of children and their families.

Because of these boundary breaches and the resulting loss of even the appearance of neutrality, The Arc of Pennsylvania and other family advocates have ceased to believe in the independence of ODR. The unacceptable situation is likely to continue until ODR is provided true and complete independent status under which it does not rely upon PDE for constant approval of budgeting, administration, hiring, development and training decisions.

Proposed Solutions

The Arc of Pennsylvania strongly recommends that several reforms be implemented to provide greater independence for ODR.

- *Direct Appropriations:* The Legislature should provide a direct appropriation for ODR that is not dependent upon review and approval by PDE. This approach is consistent with the funding of other independent agencies of the state government.
- *Neutral Location:* ODR should be housed in an independent location and not within a public school agency, such as an intermediate unit.
- *Balanced Governance:* The Legislature should enact enabling legislation directing the ODR be governed by a publicly accountable Board of Directors appointed by the Governor and the Legislative leadership, with even representation of parents with children with disabilities and public school officials or within the Office of Child Development, as well as with independent members in the fields of Special Education and physical, behavioral, cognitive and intellectual disabilities in children. The newly constituted Board should be mandated to institute safeguards so that any effort by public official or private individual; to improperly influence or pressure ODR to take, or refrain from taking, any material administrative action, or to compromise ODR's neutrality and independence is brought before the Board for review, public comment and action.

Summary

The establishment of a neutral and fully independent Office for Dispute Resolution is critical to the unbiased and fair operation of the special education due process system in Pennsylvania. Without the development of a complete and effective separation from the Pennsylvania Department of Education, public confidence in the special education system will erode even further, and the effectiveness of ODR staff and hearing officers will be negatively impacted. The Arc of Pennsylvania strongly recommends that an independent Board of Directors be

created to establish the independence and neutrality of ODR, that the agency's offices are moved to a neutral location and that ODR be funded by direct appropriation.