Problem Solving & Dispute Resolution
Ann Siegel, Education Team Manager

- Advocate for students with disabilities for over sixteen years.
- Juris Doctor from Nova Southeastern University, Shepard Broad Law Center.
- Former Guardian Ad Litem and Senior Attorney at Legal Aid Service of Broward County.
- Returned to Disability Rights Florida (formerly the Advocacy Center for Persons with Disabilities, Inc.) in January 2009 as Education Team Manager.
- Member of the Florida Bar and is admitted to practice in the U.S. District Courts for the Southern, Middle and Northern Districts as well as in the 11th Circuit Court of Appeal.
Disability Rights Florida is the designated protection and advocacy system for individuals with disabilities in the State of Florida.

Disability Rights Florida has authority and responsibility under eight federal grants.

Established in 1987, Disability Rights Florida is a statewide, not-for-profit corporation.
OUR MISSION

• To advance the quality of life, dignity, equality, self-determination, and freedom of choice of persons with disabilities through collaboration, education, advocacy, as well as legal and legislative strategies.
We Will Cover

- Problem Solving in Special Education
- Four Steps in Problem Solving
- Case Scenarios
- Q & A
- Informal Conflict Resolution
- State Complaints
- Mediation
- Due Process
- OCR Complaint
When To Use the Problem Solving Process

• Any time there is the potential for conflict between parties.
  • IEP meetings
  • Behavior Meetings
  • Teacher Conferences
Ask Yourself These Questions

• **Step 1: Problem Identification**  
  What is the problem?

• **Step 2: Problem Analysis**  
  Why is it occurring?  
  What are your specific concerns?

• **Step 3: Intervention Design**  
  What are your goals?

• **Step 4: Solutions**  
  What steps are necessary to achieve your goal?
Case Scenario: 1

Client: Jon
Age: 12
ESE Eligibility: Autism

Team is at an IEP meeting and they are discussing issues related to Jon’s ability to write. Jon has a difficult time with fine motor tasks and often times has difficulty with long writing assignments. The parent would like Jon to be exposed to an Alpha Smart for writing and the parent would like for Jon to receive OT for writing. The team agrees that an Alpha Smart will be helpful for Jon and they develop a goal that states: Jon can use the Alpha Smart when writing. The parent has a difficult relationship with the team and does not like this goal. The parent feels that if the goal is written like this he will not get to use the Alpha Smart. The parent would like the goal to be written like this: Jon will use the Alpha Smart for writing activities. The team does not feel that Jon needs OT services since he can write. The teacher feels that he is given support in this area and does not think that this impacts his entire day and/or his educational environment. Jon was evaluated for OT two years ago and did not qualify for services.

Use the problem solving process to help this team come to consensus and develop a goal for Jon that works for everyone.
Step 1: What is the Problem?
• Jon needs added supports for long writing assignments.

Step 2: Problem Analysis
• Jon has issues during writing. He has fine motor issues that impact his writing ability. The problem occurs more when he is given a long writing assignment.

Step 3: Intervention Design
• Get an Alpha Smart for Jon to use for writing activities.
• Discuss the goal and determine how it can be written so that it promotes self advocacy for Jon and so that the parent will feel confident that the Alpha Smart will be available to him.
• Have an OT come out while Jon starts on the Alpha Smart and provide him with some key boarding skills training.
• Request an updated OT evaluation.
Case Scenario: 1

Step 4: Solutions

- OT will come out and observe Jon next week.
- Following the observation, the team will meet to discuss findings.
- Within two weeks an Alpha Smart will be available for use and Jon will work with the OT and teacher on how to use this device.
- Team will implement intervention and teacher will take data on its success and quality of work for two months.
- In two months, team will come together to discuss and make any necessary changes to the plan. If at that time, the team is not happy with the outcome, the parent can request an OT evaluation.
- IEP goal is revised so that it states Jon will request to use his Alpha Smart for long writing assignments.
Case Scenario:  2

Client: Brad  
Age: 7 years old

Your 2nd-grade child is having difficulty with his homework. Some days he simply refuses to do it. He cannot understand what is being asked of him. He has difficulty reading and understanding the instructions. He is falling behind in class and his grades reflect it. He is also starting to act out and you notice that he is frustrated when given something he cannot do. You know there is something “wrong” but cannot pinpoint what it is.

Compared to your other children, you know that your child’s academic skills are not progressing in a “normal” fashion. Additionally, you notice that his use of language is not appropriate for his age.

You have approached his teachers and the guidance counselor but everyone says that there is nothing wrong with your child and that he is exhibiting typical 2nd-grade behavior. They suggest that you give him more time to catch up. When you inquire into special education services and evaluations, you are told that it can take up to two years to evaluate your child and that you should not want to “label” your child. The school staff suggests using general interventions instead of evaluating for ESE. Even though you are not an education expert, you know that your child needs more intensive help and an evaluation to pinpoint any potential disabilities.
Case Scenario: 2

Step 1: What is the Problem?
• The child is struggling in reading and math and his use of language is not “normal” for his age. He is falling behind in school. He is frustrated because he cannot understand the work.

Step 2: Problem Analysis
• The child is experiencing these problems because the school has not appropriately identified his areas of suspected disabilities and areas of need. Because the school has not done this, they may not be offering the appropriate assistance. If the child does not get appropriate assistance now, he will continue to fall further behind.
Case Scenario: 2

Step 3: Intervention Design
• Get the child appropriately evaluated and identified. Get the child appropriate educational services.

Step 4: Solutions
• Place your request to have your child evaluated for ESE in writing.
• Submit your written request to the principal and ESE staffing specialist.
• Remember to document every single request. If you don’t place it in writing, you will not be able to prove you made the request later on.
• Familiarize yourself with the law. Know that your child can be provided general interventions and at the same time be provided with initial evaluations to determine ESE eligibility.
• Once the evaluations are complete, meet with the school staff to determine whether your child meets eligibility for ESE.
Case Scenario:  3

Johnny is in 6th grade. He has ADD and has had Individual Education Plan since the third grade. He is struggling academically. He never writes his home work in his planner. He never hands in his home work. He does not pay attention to the teacher’s directions or instruction. He often disrupts the classroom. He refuses to do his class work and he never completes his tests. He has received 18 referrals this school year. He has been sent to internal suspension 7 times for two to three days at a time. He has been sent home for eleven days out of school suspension. He is often accused of cursing and fighting with staff and peers.

The school administration is not in communication with the Exceptional Student Education department. They are totally unaware of how many times Johnny has been suspended. Johnny is at risk of being retained this school year as he is currently failing all of his classes. He tells his parents he hates school and his teachers hate him. The parents do not know what to do. Johnny doesn’t want to go to school. When they can get him to go to school he either gets into an altercation with staff or he complains he has isn’t feeling well and wants to come home.

He has missed so many days of school this year the school
Case Scenario: 3

Step 1: Problem Identification
• Johnny’s behavior is keeping him from being successful in school. He is failing. He does not complete assignments, homework, tests. He cannot focus on instruction. He gets into altercations with staff and peers. He is continually getting suspended and missing out on valuable academic instruction.

Step 2: Problem Analysis
• Johnny does not want to go to school. He says he hates school and his teachers hate him. He is failing and getting suspended. He is at risk of being retained. The parent does not want him to feel unsuccessful, continue to fail and be suspended.

Step 3: Intervention Design
• To have Johnny attend school, complete his class work and tests, write down his assignments, not get into altercations with staff and peers, and be a successful and self-confident student who will continue to make academic progress.
Step 4: Solutions

- Provide a written request to the Principal/ESE Staffing Specialist requesting an Individual Education Plan (IEP) meeting to discuss your concerns. At the meeting possible solutions could be further evaluations to make sure Johnny’s IEP addresses his current academic, attention and behavioral needs. The Team can look at what goals, supports and services Johnny requires to receive a free and appropriate public education.

- A functional behavior assessment and positive behavior intervention plan should be included to meet Johnny’s unique behavioral needs.

- Also, administration needs to address the suspension issue; Johnny is continually being suspended for the same behavior. The school has suspended him over ten days and they have never conducted a manifestation determination.

- Administration needs to be aware and comply with the Individuals with Disabilities Education Act when disciplining an ESE Student.
What Do You Do If You Can’t Come to Consensus?
Conflict

• How do disagreements get resolved that arise during IEP meetings?
• What can parties do when they cannot come to an agreement?
• In the best situation they can compromise.
Conflict

• In reality the school will decide.
• The school will often tell the parent that they get to determine the resolution as the school is ultimately responsible for the provision of a FAPE (free appropriate public education) as the Local Education Agency (LEA).
Conflict

• What do parents do when they cannot get the school to agree with their request/s?
• They have to accept the proposed IEP or seek to enforce their Due Process rights.
Options

1. Try to resolve at the school level with the IEP Team, Principal and ESE Staffing Specialist.
2. Contact the District ESE Director and Superintendent.
3. Contact Disability Rights Florida.
4. Request Informal Conflict Resolution.
5. Request Mediation.
6. File a State Complaint.
7. File for Due Process
10. Contact your Florida Representative or Senator.
Informal Conflict Resolution

• Ask for your procedural safe guards.
• Contact your district level ESE Representative and ask for local conflict resolution.
• Get resolution agreement in writing.
• http://www.fldoe.org/ese/resolution.asp
State Complaint

- State complaints may be filed by an individual or an organization.
- You must include a statement alleging a violation under Federal or State Law.
- Be specific and provide any and all supporting documentation.
- Provide your contact information and signature.
State Complaint

• Alleges a violation that occurred not more than one year prior to the date that the complaint is received.

• If alleging violations with respect to a specific child, include:
  • the name and the address of the residence of the child,
  • the name of the school the child is attending,
  • a description of the nature of the problem of the child, including facts relating to the problem, and
  • a proposed resolution of the problem.

• Party filing the state complaint must forward a copy of the complaint to the school district serving the child at the same time the complaint is filed. (Section 300.153 of Title 34 of the Code of Federal Regulations)
State Complaint

- Send a copy of the State Complaint to the ESE School District Office and to:
  - Bureau Chief
  Bureau of Exceptional Education and Student Services
  Florida Department of Education
  325 West Gaines Street, Suite 614
  Tallahassee, Florida 32399-0400
  Fax #: (850) 245-0953
State Complaint

• The State will contact both parties.
• It is the Bureau’s responsibility to review all relevant information and make an independent determination as to whether or not the school district violated Federal or State Law.
State Complaint

• A Report of Inquiry is provided to both parties, including the following: a statement of the complaint issues / allegations, findings of fact, conclusions, corrective action and/or recommendations (if appropriate) and the reasons for the Bureau’s final decision.

• You may file a Due Process hearing if you are in disagreement with the findings.
Mediation

- Voluntary on the parties.
- Not used to delay a parent’s due process rights.
- Conducted by an impartial trained mediator.
- At no cost to the parent.
Mediation

• Mediation is good opportunity for parents to resolve the dispute.
• Mediation allows parents the opportunity to resolve the dispute on a level playing field.
• Mediation affords parents the opportunity to state their concerns in a safe environment.
Mediation

• The mediator has the ability to provide a safe environment for the parties to work toward an amicable resolution.

• The mediator can keep the focus on the issues and can keep the parties from letting personalities get in the way of a resolution.
Mediation

• The mediator facilitates the conversation.
• The discussions are confidential and information shared cannot be used against either party in subsequent litigation.
• The written settlement agreement is legally binding and enforceable in court.
Request for Mediation

To request mediation, please contact:

• Florida Department of Education
• Bureau of Exceptional Education and Student Services
• 325 West Gaines Street, Suite 614
• Tallahassee, FL 32399-0400
• Telephone: (850) 245-0476
• Fax: (850) 245-0953
• www.fldoe.org/ese/pdf/mediationrequestform.pdf
• www.fldoe.org/ese/doc/mediation-fact-sheet.doc
Due Process

• Parents cannot force the school district to mediate.
• Parents are often left with the only option of filing for Due Process.
• Most parents cannot afford litigation, financially and emotionally.
• Not a timely resolution.
Due Process

The request must:

- be clearly and specifically written.
- include a statement which describes how the district has violated a requirement of the Individuals with Disabilities Education Act (IDEA) and/or the corresponding state requirements,
- include an explanation of the facts on which the complaint is based,
- propose a resolution, and
- include a signature and contact information for the complainant.
Due Process

- The Due Process Complaint must be sufficiently plead.
- If you do not raise the issue in the Complaint it will not be considered at hearing.
- Within 15 days of receiving notice of the parent’s due process complaint, and prior to the initiation of a due process hearing, the school district must convene a resolution meeting with the parent to discuss the basis of the complaint and to provide the district with the opportunity to resolve the dispute.
Due Process

• The resolution meeting must include the relevant member or members of the IEP team who have specific knowledge of the facts identified in the due process complaint and a representative of the district who has decision-making authority on behalf of that agency.

• It may not include an attorney of the district unless the parent is accompanied by an attorney.
Due Process

- Litigation is timely, emotional and cost prohibitive.
- Expert witness fees are not recoverable under IDEA.
- Statistical bias in hearings.
- There is a two year statute of limitations.

Mail or Fax:

- Complainants may mail or send by facsimile a letter or use the OCR’s Discrimination Complaint Form available from one of OCR’s enforcement offices. In your correspondence, please include:
  
  - The complainant’s name, address and, if possible (although not required), a telephone number where the complainant may be reached during business hours;
  
  - Information about the person(s) or class of persons injured by the alleged discriminatory act(s) (names of the injured person(s) are not required);
  
  - The name and location of the institution that committed the alleged discriminatory act(s); and
OCR Complaint

- **Write** a description of the alleged discriminatory act(s) in enough detail to let OCR understand what happened, when it happened, and the basis for the alleged discrimination (race, color, national origin, sex, disability, age or the Boy Scouts of America Equal Access Act).

- **E-mail**: Complainants may file a complaint, using the following e-mail address. (Use the same procedures)

- **Online**: Complainants may file a complaint with OCR using OCR’s electronic complaint form at the following Web site: [http://www.ed.gov/about/offices/list/ocr/complaintintro.html](http://www.ed.gov/about/offices/list/ocr/complaintintro.html)
HOW TO REQUEST SERVICES

- **800-342-0823**
  - We will gather information
  - Review your request
  - Provide follow-up information and referral
  - Discuss other possible services

Web Site

[www.DisabilityRightsFlorida.org](http://www.DisabilityRightsFlorida.org)

- Visit the Contact Tab
- Use an Online Form to Request Services
TO LEARN MORE

  - Access resources on many disability topics
- See our latest news
- Sign up for our Electronic Newsletter
- Follow Disability Rights Florida on Facebook and Twitter
- Read our Annual Report
- Request a publication
- Attend a workshop or outreach event