



A BASIC GUIDE TO SELF-ADVOCACY

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This manual is intended to provide a simple yet informative overview of how to be a self-advocate. This manual is not a substitute for legal advice. If you have specific questions or need assistance with a particular issue, please contact Disability Rights Maine.

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ADVOCACY

Definition: The act of pleading or arguing in favor of something, such as a cause, idea, or policy.

The Advocate

- Anyone can do advocacy.
- It does not take a professional.
- It requires a few skills, preparation, and trust in oneself.



Keys to Effective Advocacy

- Maintain the right behavior.
- Know your rights.
- Understand the problem you want to correct.
- Decide what you want for a solution to the problem.
- Choose the way you want to raise your complaint.
- Present your case.
- Follow-up.

THE RIGHT BEHAVIOR

- How you act when advocating for yourself is important because you want your ideas to be heard.
- You do not want people focusing on how you are acting.
- To be an effective self-advocate you need to be able to speak up for yourself.
- Too little assertiveness can be an obstacle to effective advocacy.
- On the other hand, excessive anger is an obstacle to effective advocacy; your anger, not your ideas, becomes the focus.

KNOW YOUR RIGHTS

- There are many sources of rights.
- There are so called “human rights”.
- There are also federal and state constitutions, laws, and regulations.
- There are hospital and agency policies.
- There are also unspoken rules of common courtesy we deal with every day.



SOME LAWS & REGULATIONS THAT MIGHT APPLY

- Rights of Recipients of Mental Health Services
- Maine Human Rights Act
- Americans with Disabilities Act

- Licensing regulations
- Hospital or agency policies
- Maine mental health laws
- Medicaid law and regulations
- Involuntary commitment laws

UNDERSTAND THE PROBLEM

- You need to think about the problem in order to decide whether you want to do anything about it and then what you want to do about it.
- Was it a one-time incident?
 - Maybe a one-time incident is something you do not want to deal with.
- But was it a serious one-time incident?
 - Maybe if it was serious, you need to do something to protect yourself so it does not happen again.
- Does the problem happen a lot?
 - If the problem keeps happening, maybe you want to do something, even if it was not an extremely serious problem.
- Is the problem something you can do anything about?



KNOW WHAT YOU WANT: DESIGN A SOLUTION

- Provide a roadmap for a solution before you raise a complaint, so that you are asking *for* something.
- Otherwise, what you are given may not get you where you want to go.

THE BEST SOLUTION

- When thinking about the best solution for you, think of reasons why it is a good solution for the other side as well. This is called a “win-win situation” and it is a good selling point.
- Will your solution...
 - Make it possible for them to avoid future injuries?
 - Save money?
 - Save time?
 - Avoid a negative licensing action?

DESIGN A SOLUTION

- Some problems have more than one acceptable solution.
- You can offer several alternatives.
- You should think about alternatives that would be acceptable to you if offered.
- This is what you can negotiate with.

CHOOSE HOW YOU WANT TO PROCEED

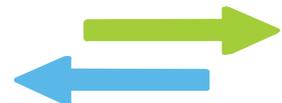
There are a lot of ways to raise your concerns about an issue. The nature of the problem, the type of “right” you are relying on for support, and what you want, will guide you in choosing how to raise the problem.

THERE ARE FORMAL AND INFORMAL WAYS TO A RESOLUTION

- An informal unscheduled conversation
- A scheduled conversation
- A more formal meeting
- An informal letter
- A formal grievance
- Mediation
- Litigation

WHICH WAY IS BEST?

Some things that influence your choice of ways to seek a resolution:



- The problem
 - You would not choose litigation if your problem was that staff treated you discourteously.
- The solution you want
 - You would not choose a grievance if you are seeking monetary damages.

- Your relationship with the person you need to address
 - If you ordinarily have a good relationship, you might want to try a conversation.

PREPARING

- Whichever way you choose for raising your issue, be prepared.
 - It will keep you focused
 - It will save you time later
 - It will save others' time
 - It will make you more persuasive



HOW TO SET OUT ISSUES

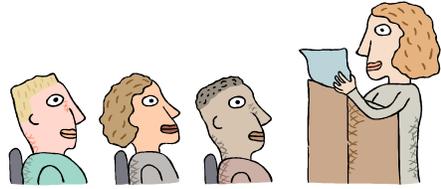
Whether you are in a conversation, or writing a grievance or letter, a good format for raising your issues is this:

- State the relevant facts.
- State how you were harmed.
- State why you think something was wrong – the rule, policy, law or regulation that was broken.
- State what you want and why it is a good resolution.

FORMAT

- Whether orally presenting your complaint, or doing it in writing it is meant for an audience.
- Keep this audience in mind.

- Do not put them to sleep.
- Do not make them angry.
- Do not confuse them.



THE FACTS

- When stating facts, limit yourself to what is relevant.
- Too many facts become confusing and can lead you into a discussion of matters that are not essential.

HOW YOU WERE HARMED

- This is what makes the case real.
- It helps others understand why you are complaining.
- It may be a physical injury, financial loss, emotional injury, serious inconvenience, or embarrassment.



THE SUPPORTING BASIS

- Have the rule, policy, law, or regulations that you are relying on available if you are having a meeting or a conversation.
- If you are doing your complaint in writing, refer to the rule, policy, law, or regulation by name.

THE SOLUTION

- Have your suggested solutions memorized or in writing so that you can refer to them during the meeting.
- Write them out if you are doing a written grievance.
- State the “selling points” to the solution.

THE PROCESS

- Speak or write clearly, calmly, respectfully.
- Paperwork – have all your papers organized so that you do not have to shuffle through them.
- Listen to what others are saying.

RESOLUTION

- Take the time to carefully consider any resolution offered to you.
- Sometimes compromises can get you a good result.
- Make sure you understand. Ask questions.
- If you need to talk to someone else, take that time.



FOLLOW-UP

- Not all resolutions go into effect smoothly.
- Be prepared to follow-up with a conversation or a letter.

ASSISTANCE

- Get assistance in the process if you feel you need it.
- If you have questions, call DRM at 207.626.2774 or 1.800.452.1948 (V/TTY).





Timelines:

Deadlines matter. Your case can be dismissed if one is missed. So, having some understanding of what you should, or must, happen and when, can help. Here are some of the most important deadlines and timeframes.

COMPLAINT TIME LIMITS

The complaint must allege violation that occurred no more than **1 year** prior to date that the complaint is received, unless the complaint involves compensatory services; in those cases you have **3 years**.

DUE PROCESS HEARING REQUEST

A due process hearing request must be made within **2 years** of when the parent or school knew or should have known about the disagreement.

COMPLAINT INVESTIGATION COMPLETED

The Department will investigate and resolve complaints within **60 calendar days**. The timelines specified in these procedures will commence on the date the Department receives a complete signed, written complaint.

HEARING REQUEST REACH A DECISION

The hearing officer must make their decision about the request within **5 calendar days** of getting the challenge.

RESPOND TO WRITTEN NOTICE

If the school files a due process hearing request against you, you need to send a written response to the school within **10 calendar days** of when you get the request. Your response must address the issues the school raised.

CHALLENGE SUFFICIENCY

The challenge must be in writing and sent to the hearing officer within **15 calendar days** of receiving the hearing request.



DISPUTE RESOLUTION

The school has **30 calendar days** to resolve the problems you raised to your satisfaction. It does this by scheduling a dispute resolution meeting within 15 calendar days of getting a copy of your due process hearing request.

RESPOND TO SUFFICIENCY CHALLENGE

5 Days for a hearing officer to respond to a sufficiency challenge.

ATTEMPT TO RESOLVE ISSUE

The "resolution session" must happen in **7 calendar days** instead of 15 calendar days. If the issue is not resolved within **15 calendar days** from when the school got the expedited due process hearing request, the hearing timeline is **30 school days**.

REVOKE RESOLUTION MEETING AGREEMENT

If you and the school reach an agreement at the resolution meeting, it must be written down. Both you and someone from the school with authority to agree for the school must sign it. You or the school can change your minds within **3 business days** of when the agreement is signed. After that, the agreement is legally binding.

EXHIBITS SUBMITTED

The school and parent must exchange exhibits at least **5 business days** before the hearing.

ISSUE DECISION

The hearing officer must make a decision within **15 calendar days** after the hearing has ended. If written arguments were submitted, this means 15 days after she received them.

EXPEDITED HEARING

The hearing must be held within **20 school days** after the resolution period has ended.

EXPEDITED HEARING DECISION

The hearing officer must issue a decision within **10 school days** after the hearing has ended.

SCHOOL TO DOCUMENT

If the school loses the hearing, it must comply with the decision within **45 calendar days** or file a Court appeal.

APPEAL DUE PROCESS HEARING DETERMINATION

The party who loses can **appeal to federal Court or Maine Superior Court within 90 calendar days** of receiving the decision.

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COMPANION DOCUMENT TO MAINE'S PROCEDURAL SAFEGUARDS

A. PARENTAL PARTICIPATION

As a parent, you have the right to know about and go to Individual Education Program ("IEP") Team meetings about your child's special education. These meetings may discuss your child's need for special education, evaluations that may be done, services that may be provided and the setting where your child might get his/her services. If you can't attend a meeting in person, you have the right to attend by phone or video conferencing.

B. WRITTEN NOTICE TO PARENTS

You must be given a written notice at least 7 days BEFORE any changes in your child's program. If the school decides NOT to make a change, you will also get a written notice. You will receive a written notice for these types of things:

- Whether your child is eligible for special education
- Evaluations
- Changes to services or the setting in which your child receives those services

The school may need you to sign a form allowing them to do one of the things listed above. This form may come to you at the same time as the written notice.

The written notice will:

- Explain the change and why the school wants to make the change or will not make the change.
- List other things that the school thought about and why they decided not to do them.
- Describe the things it used to make the decision: evaluations, tests, review of your child's records, or teacher reports.
- Explain other things that the school thought about to make its decision.
- List people you can contact to help you understand your rights.

C. PARENT CONSENT

Before the school can do an evaluation to see if your child needs special education, you will need to sign a form for this. If more evaluations or reevaluations are needed, you will need to sign a new form allowing the school to conduct them. The school also cannot begin to provide special education services to your child unless you sign a form. When you sign any of these forms, you are signing that you understand what the district plans on doing and that you agree.

If you don't sign the form to let the school evaluate your child, the school can ask for a hearing or mediation to see if they can evaluate your child without your permission. If you don't sign the form to let the school provide special education

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services to your child, the school cannot provide those services. If, after your child begins to receive special education services, you decide to take back your consent for those services, the school must stop providing them to your child.

Either parent can sign the forms. The school will do evaluations or begin services for your child once one parent has signed the forms as long as that parent has parental rights, even if the other parent does not want to sign them.

D. INDEPENDENT EDUCATIONAL EVALUATION

If you don't agree with a school evaluation, you can ask the school to pay for another evaluation done by a person who does not work for the school. If the school doesn't want to pay, it must ask for a hearing to show that their evaluation is done correctly. If the hearing says that the school evaluation is done correctly, you can still ask for someone else to do the evaluation, but you will have to pay for it. If the hearing shows that the school evaluation is not done correctly, the school will pay for the new evaluation by someone else. This new evaluation will need to meet the same standards as the one done by the school. If an independent evaluation is done, the school will have to talk about that evaluation and how that might change special education for your child.

E. ACCESS TO RECORDS

You have the right to look at the school's records about your child's special education. The school has to allow you to look at these records within 45 days of your request, or sooner if there is a meeting scheduled or if you have a hearing scheduled about your child's special education. If another child is mentioned in records about your child, you won't be able to see those parts of the records.

You have the following rights:

- The right to ask the school to explain the records.
- The right to have someone who is working with you look at the records.
- The right to ask for copies of records if that is the only way that you are able to look at them.
- The right to prevent the school from releasing your child's records without your consent, unless the state or federal law allows for the release of that information.

You won't have to pay to look at your child's records, but you may have to pay to have copies of records. If you ask, the school will tell you what kinds of records are kept on your child and where all the records are kept and used. The school keeps a list of people who look at a child's records, except for parents and teachers. The school will keep a list of the person's name, the date they looked at the records and why they needed to look at them.

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F. AMENDMENT OF RECORDS AT PARENT'S REQUEST

If you think any of the information in your child's record is wrong, you can ask that the school change it. If the school doesn't want to change the information, they must tell you that they refuse and then you can ask for a hearing.

If the school changes the record because of the hearing, they have to send you a letter telling you it was changed. If the school doesn't have to change your child's because of the hearing, they have to send you a letter telling you that you can put something in writing in your child's record explaining why you don't agree with the information. Your written statement will stay with your child's record.

G. COMPLAINT INVESTIGATION

If you think the school is not following the special education rules, you can write down your complaints and send it to the Department of Education's Due Process Office. You must write the names and addresses of the child and the school, your contact information, and how you think the school should fix the problem. You must also sign the complaint and give a copy of it to the superintendent. You may use a form for your complaint that is available from the Due Process Office (207-624-6644). The Department will have up to 60 days to investigate (unless the Department has given you or the school more time) and decide if the school is following the special education law or rules. If the school is not following the law or rules, the Department will tell the school what to do to take care of your complaint.

H. MEDIATION

If you and the school do not agree about whether your child should receive special education services, the services he/she should have, the setting in which your child receives his/her services, or about evaluations, either you or the school can ask for mediation. Both you and the school must agree to the mediation. You can ask for mediation even if you are also asking for a hearing or filing a complaint.

The mediator must be impartial (does not favor either side) and is free to both you and the school. The mediation must be held promptly and at a time and a place that is convenient to both you and the school. The mediator is trained in helping people resolve disputes. If you and the school reach agreement during the mediation, the school must do what the agreement says. If the school does not do what you agreed on during the mediation, you can file a complaint about that. What people say at the mediation remains confidential.

I. DUE PROCESS HEARING

Either you or the school can ask for a hearing about whether your child should receive special education services, the services he/she should have, the setting in which your child receives his/her services, or about evaluations. You must ask for a hearing in writing, and you may choose to use a form that is available from the Due Process Office (207-624-6644). You must write your child's name, his/her address,

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and where your child goes to school. You have to write down the problem and any other information about the problem. You should also write down what you would like to have happen for your child. You must give a copy of the form or letter to the superintendent.

An impartial hearing officer will listen to both you and the school. There may be people who can help you understand the hearing process, and you can ask the Due Process Office to give you a list of those people. At least five working days before the hearing, you and the school will need to share evidence that you want to talk about at the hearing. A decision about the complaint will be made within 45 days, unless the hearing officer has given you or the school more time. The hearing officer's decision is final unless you or the school decides that you want to bring a civil action in court. (See below.)

You and the school have the right to:

- Bring a lawyer and/or people who have special skills or training on children with disabilities.
- Bring evidence and question witnesses. You can require witnesses to attend by serving them with a subpoena (available from the Due Process Office).
- Not allow evidence that wasn't shared at least five working days before the hearing.
- Get a recording or exact written report of the hearing.
- Get a written report of what the hearing officer decided.

As the parent, you have more rights:

- You can bring your child to the hearing.
- You can say that the public can attend.
- You don't have to pay for the report of decisions and record of the hearings.
- The hearing has to be held during regular business hours at a time and place that works for you and your child.

J. CIVIL ACTION

Either you or the school can bring a civil action if they are unhappy with the result of the due process hearing. The court will review the record of the hearing, may review additional information and make a decision. You must go through the hearing process before filing a civil action.

K. AWARD OF ATTORNEY'S FEES

The school may have to pay your attorney's fees if ordered to do so by the court. A settlement agreement may include the school paying your attorney's fees. You or your attorney may have to pay the school's attorney's fees, but only in the rare case

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when the court finds that you brought your case for an improper reason, such as to harass the school or cause delay without a good reason.

L. CHILD'S STATUS DURING DUE PROCESS PROCEEDINGS

Unless you and the school agree to something else, your child must stay in his/her current educational program until your complaint, mediation or hearing is finished.

M. PRIVATE SCHOOL PLACEMENT BY PARENTS

In some cases, a school district might have to pay you for sending your child to a private school. You would need to show at a due process hearing that your child's local school did not provide a free appropriate public education and that the private school you chose is right for your child.

You must also either tell the school at an IEP Team meeting that you don't like the plan for your child and are going to send your child to a private school for which the public school should pay, or else write those things in a letter at least 10 days before you remove your child from the public school. If evaluations were already planned for your child, you will need to let the school do those evaluations.

N. DISCIPLINARY PROCEDURES

Even though your child is in special education, he/she must follow the same rules as all other students and may be suspended if he/she breaks those rules. If your child is suspended for more than 10 days, either in a row or over the whole school year, the school must provide some services outside of your child's regular school program to help your child continue to work on IEP goals.

If your child is suspended for a total of more than 10 days, there will be a meeting to determine if your child's behavior that led to the suspensions is related to your child's disability. If your child's behavior is because of his/her disability, the IEP team must do a study of your child's behavior and write a behavior plan, and must return the child to his/her program (unless the suspension involved weapons, drugs or serious injury). If the child's behavior is not because of his/her disability, then the school may treat your child the same way they treat other children, and must consider whether to do a study of your child's behavior or write a behavior plan.

If the school decides that your child's behavior is not because of his/her disability and you disagree, you can ask for an expedited due process hearing. The hearing will take place sooner than usual, within 20 days plus 10 days for the hearing officer to write a decision. If your child was placed in a different setting because of his/her behavior, he/she must remain in that different setting while the due process hearing takes place unless you and the school come to a different agreement.

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O. TRANSFER OF RIGHTS

Once your child is 18, he/she will have the rights outlined in Maine's Procedural Safeguards unless a court gives him/her a legal guardian. Your child will be told of these rights about a year before he/she turns 18. Both you and your adult child will be invited to meetings and get the written notices about changes.