



EDUCATION

ALERT

EVALUATIVE CONCILIATION CONFERENCE – A NEW WAY TO RESOLVE SPECIAL EDUCATION DISPUTES IN PENNSYLVANIA

The Pennsylvania Office of Dispute Resolution (ODR), the body that is responsible for the resolution of special education disputes in Pennsylvania, has introduced a new method of attempting to resolve these disputes called an Evaluative Conciliation Conference (ECC). Similar in some respects to the current mediation process, each side will submit its respective positions to a consultant, who is a special education hearing officer, who will offer a risk assessment of merits of the case for each side and work with the parties in an effort to bring the matter to resolution.

Under the ECC program, both sides must agree to engage in the process and, currently, both sides must have counsel, unlike mediation in Pennsylvania special education, in which neither party is permitted to have counsel participate. Under the current procedure used, both sides will submit a confidential memo to the consultant setting out the party's position. From there, the consultant will discuss the matter with the

attorneys involved either together or separate in an attempt to work toward potential resolution of the matter.

While the process appears likely to give parties an opportunity to get a realistic assessment of what a hearing officer may think of a case as well as determining possible weaknesses in a case, it may require additional attorney time early in the process. In addition, the issue of parents' attorney's fees is likely to continue to be an issue and those fees may rise given the time required under this process. The ECC program is in a pilot mode and some of the details of how it will work and its effectiveness will not be known until the process has been used for a period of time.

If you should have any questions about the information contained in this Alert, please contact Timothy Gilsbach at 610.397.6511 or tgilsbach@foxrothschild.com or any member of Fox Rothschild's Education Law Group.

