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DUE PROCESS COMPLAINTS INCREASE DRAMATICALLY

The Pennsylvania Office for Dispute Resolution (ODR) recently released its 2018-2019 annual report, which shows a 21% increase in due process litigation over the past four years. During the 2018-2019 fiscal year, ODR reported 1000 due process complaints, up from 823 during the 2015-2016 fiscal year. Over the past five years, five intermediate units statewide have all averaged more than fifty complaints per year: Philadelphia IU, Chester County IU, Delaware County IU, Montgomery County IU, and Northeast IU. Five additional Intermediate Units have averaged 30-49 complaints per year – Allegheny IU, Berks IU, Colonial IU, Bucks IU, and Luzerne IU.

Despite the significant increase in due process complaints, the number of cases going to a full due process hearing remains nearly level – with 102 written decisions issued during the 2015-2016 fiscal year and 95 during the 2018-2019 fiscal year. Similarly, the number of final due process decisions appealed to a reviewing court remain close to level over the past four years. ODR has also consistently reported over the past few years that the vast majority of due process complaints settle.

At the same time due process complaints have been increasing, requests for mediation have been decreasing. ODR's annual report shows that mediation requests peaked during the 2016-2017 school year with 483 requests, but have dropped 22% to just 374 during the 2018-2019 fiscal year. While both mediation and due process aim to resolve special education disputes, mediation differs significantly because attorneys do not participate in the process.

ODR does not hypothesize on the reasons for the increase in due process litigation. But anecdotally, increases in the number of attorneys specializing in special education litigation, the decrease in alternative dispute resolution such as mediation, and the current state of the economy are all likely factors leading to the increase.

Clients who have questions regarding issues discussed in this article, or any education law matter, should feel free to call us at 215-345-9111.

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