

April 15, 2010

TO: Directors of Special Education and Pupil Services, Parent Advocacy Groups, Due Process Hearing Officers and Other Interested Parties

FROM: Stephanie J. Petska, Ph.D., Director, Special Education
Division for Learning Support: Equity and Advocacy

SUBJECT: Resolution Sessions

The Individuals with Disabilities Education Act (IDEA) requires the Department of Public Instruction (DPI) to monitor local educational agencies (LEAs) located in the State in the use of resolution sessions. DPI must ensure that, in accordance with 34 CFR §300.510(a), LEAs hold a resolution session within 15 days of receiving notice of the parent's due process complaint. If the State finds that an LEA is not in compliance with this requirement, it must issue a finding of noncompliance and ensure correction of the noncompliance as soon as possible and in no case more than one year after identification.

During the week of November 30, 2009, the Office of Special Education Programs (OSEP) conducted a verification visit in Wisconsin to ensure compliance with and improve performance under IDEA. During the review, OSEP concluded that DPI has written policies and procedures that align with the IDEA regarding resolution sessions and accompanying timelines but does not consistently track resolution session timeline data to ensure compliance with the 15-day timeline. OSEP directed DPI to track resolution session timelines to ensure compliance with the 15-day timeline and to inform hearing officers, LEAs, parent advocacy groups and other interested parties of the requirements associated with resolution sessions. This memorandum is in response to these directives.

Prior to the due process hearing, the LEA must convene a resolution session where the parents of the child discuss the issues leading to their due process hearing request and the LEA has an opportunity to resolve those issues. Within 15 days of receiving notice of the parents' hearing request, the LEA must convene a meeting with the parents and relevant members of the IEP team who have specific knowledge of the facts identified in the due process hearing request. A LEA representative who has decision-making authority for the LEA must participate in the resolution session. The LEA may not have an attorney at the resolution session unless the parent is accompanied by an attorney. The resolution session process must be used unless the parents and LEA agree in writing to waive the resolution session or agree to use the mediation process.

When the LEA and parents resolve the request for the due process hearing during a resolution session, they must execute a legally binding agreement which is enforceable in a state court or a district court of the United States that is signed by both the parent and a representative of the LEA who has the authority to bind the LEA.

If the LEA has not resolved the request for the due process hearing to the satisfaction of the parents within 30 days of the receipt of the parents' hearing request, the due process hearing may proceed and all of the applicable timelines for a due process hearing begin. Except where the hearing relates to certain discipline requirements, the hearing officer must issue a written decision based solely upon the evidence presented at the hearing within 45 days of completion of the resolution session or waiving of the resolution session. The hearing officer may extend the 45-day timeline, for cause, if the parent or the LEA requests an extension.

Upon receipt of a due process hearing request, department staff will notify the LEA director of special education of the 15-day requirement for convening a resolution session and will include a form for collecting information about the resolution session (e.g., the date it was held or waived).

Questions about this information may be directed to the Special Education Team at 608-266-1781 or dpisped@dpi.wi.gov.