

TO: Special Education Directors
Due Process Hearing Officers/Mediators
Compliance Coordinators

FROM: Patricia Homberg, ^{PK} Executive Director
Office of Special Programs

SUBJECT: DUE PROCESS COMPLAINT RESOLUTION MEETING

DATE: August 30, 2010

The Individuals with Disabilities Education Act (IDEA) requires the West Virginia Department of Education, Office of Special Programs (OSP) to monitor local educational agencies (LEAs) in the State on the use of the resolution meeting. The OSP must ensure, in accordance with 34 CFR §300.51(a), LEAs hold a resolution meeting within 15 days of receiving notice of a parent's due process complaint. If the State finds 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.

Prior to the due process hearing, the LEA must convene a resolution meeting 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 meeting. The LEA may not have an attorney at the resolution meeting unless the parent is accompanied by an attorney. The resolution meeting must be used unless the parents and LEA agree in writing to waive the resolution meeting or agree to use mediation.

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

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 meeting or waiver of the resolution meeting. 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 special education director of the 15-day requirement for convening a resolution meeting and will include a form to collect information regarding the resolution meeting (e.g., the date it was held or waived). Enclosed with this memorandum are the following:

- IDEA Resolution Meeting Information Sheet;
- Due Process Resolution Meeting Timeline Tracking Form;
- Resolution Meeting;
- Waiver of Resolution Meeting;
- Due Process Complaint Withdrawal; and
- Mediation Request in Lieu of a Resolution Meeting.

Questions about this information may be directed to Ghaski Browning, Assistant Director at (304) 558-2696 or glee@access.k12.wv.us.

IDEA RESOLUTION MEETING INFORMATION SHEET

Overview

Whenever a parent requests a due process hearing, the local education agency (LEA) must provide an opportunity for a resolution meeting. The intent of this meeting is to allow the parent to discuss the concerns and the facts forming the basis of their due process hearing complaint with the LEA, and then to provide the LEA with an opportunity to resolve the concerns. This dispute resolution option allows the LEA time to work with the parent to resolve the due process complaints quickly, thus allowing both parties to control the outcome and avoid the cost of a hearing. It is important to keep in mind a resolution meeting is not an individualized education program (IEP) meeting. Since there is no guidance in the Individuals with Disabilities Education Act (IDEA) or implementing regulations about the confidentiality of discussions held in a resolution meeting, it is recommended the parties agree in writing to maintain the confidentiality of all discussions which cannot later be used as evidence in the due process hearing or any other proceeding.

Resolution Timelines

When a parent files a request for a due process hearing, the LEA must hold a resolution meeting within 15 calendar days of receiving notice of a due process complaint and attempt to reach resolution within 30 calendar days of the receipt of the hearing request.

When a parent files a request for an expedited due process hearing, the LEA must hold a resolution meeting within 7 days of receiving notice of the due process complaint, and attempt to reach resolution within 15 days of the receipt of the hearing request.

The resolution meeting need not be held if; 1) both parties agree in writing to waive the meeting or 2) both parties agree to participate in mediation.

Participants

Resolution meeting participants include the parent and the relevant member or members of the IEP team who have knowledge of the facts identified in the due process complaint, including a LEA representative who has decision making authority. The resolution meeting may not include the LEA's attorney unless the parent is accompanied by an attorney.

Non Participation in Resolution Meeting

If a parent files the due process complaint and the LEA does not convene a resolution meeting within the timelines, the parent may ask the Due Process Hearing Officer to begin the due process hearing timeline.

If the parent files the due process complaint and does not come to the meeting as scheduled, and the LEA documents it is unable to obtain the participation of the parent, the LEA may, at the conclusion of the 30-day resolution period, request the Due Process Hearing Officer to dismiss the parent's due process complaint.

Resolution Agreement

If the issues in the due process complaint are resolved at the resolution meeting, the parties shall develop a legally binding written agreement signed by both the parent and a representative from the LEA with authority to bind the

agency. The agreement is enforceable in a state court of competent jurisdictions or in a district court of the United States. Either party may void the resolution agreement within three business days of the agreement's execution.

Non Agreement

If, after the resolution meeting or mediation, the LEA has not resolved the parent's due process complaint within 30 days of receipt of the complaint, the due process hearing may occur. The 45-day due process hearing timeline begins at the end of the 30-day resolution period.

DUE PROCESS RESOLUTION MEETING TIMELINE TRACKING FORM

West Virginia Department of Education, Office of Special Programs (OSP) is required to collect data on the resolution meeting. A representative of the LEA must complete this form.

Please send a copy of the completed form along with any resolution agreements, mediation agreements, or written waivers to the Due Process Hearing Officer assigned to your case and the OSP prior to your pre-hearing conference. The documents can be mailed or faxed to:

West Virginia Department of Education
Office of Special Programs
1900 Kanawha Boulevard East
Building 6, Room 330
Charleston, WV 25305
Fax: 304-558-0459

Due Process Hearing Number: _____

Student Name: _____

Local Educational Agency (LEA): _____

Authorized LEA Representative (Print Name): _____

Signature: _____ Date: _____

Resolution Period: Resolution Meeting

1. Was a resolution meeting held? Yes No if you answered no to question #1, please go to question #4 or #5, as appropriate.

2. If yes, what was the date of the resolution meeting? _____

3. Was an agreement reached: Yes No
If yes, was it a full or partial agreement: _____
The agreement was voided within three business days Yes No

4. A resolution meeting was held, but no agreement is possible.

5. If a resolution meeting was not held please select one of the following:
 The parties agreed, in writing, to waive the resolution meeting. Provide a copy of the signed waiver to the hearing officer and OSP immediately as this will start your 45 day hearing timeline. (Attach the Waiver Resolution Meeting Form.)

- The resolution meeting was convened but the parent failed to attend (Please describe your efforts in the comments section of this form and attach any relevant documentation).
- The LEA did not convene the resolution meeting.
- The parties agreed to participate in mediation.

Resolution Session: Mediation

1. Was Mediation used in lieu of a resolution meeting? Yes No
2. If yes, what was the date of the mediation meeting? _____
3. Was an agreement reached? Yes No (Attach a copy of the mediation agreement)

Comments (Attach additional pages if necessary.)

Resolution Meeting

_____ County Schools
(district's name)

Due Process Complaint No:	Hearing Officer:
District Representative:	Parent(s)/Guardian(s):
Date:	Student Name:

<p>Resolution Meeting</p> <p>The purpose of the meeting is to discuss the due process complaint and the facts forming the basis of the due process complaint. We, the undersigned, have participated in a resolution meeting on _____ (Date).</p> <p>Outcome:</p> <ul style="list-style-type: none"><input type="radio"/> Agreement Reached<input type="radio"/> No agreement reached
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Resolution Agreement: Complete if parent(s)/guardian(s) and district reach an agreement.

[insert agreement]

(Attach additional information, if necessary)

Waiver of Resolution Meeting

_____ County Schools
(district's name)

Due Process Complaint No:	Hearing Officer:
District Representative:	Parent(s)/Guardian(s):
Date:	Student Name:

Waiver of Resolution Meeting Process

After reviewing the IDEA Resolution Meeting Information Sheet, check applicable boxes below, sign and date.

- We agree to waive the resolution meeting; or
- We agree to participate in mediation instead of a resolution meeting.

Parent(s)/Guardian(s) or adult student:

Print Name: _____ Signature: _____ Date: _____

Print Name: _____ Signature: _____ Date: _____

Local Education Agency

Signature: _____ Date: _____
Authorized School Official Representative

**Mediation Request
In Lieu of a Resolution Meeting**

_____ County Schools
(district's name)

Due Process Complaint No:	Hearing Officer:
District Representative:	Parent(s)/Guardian(s):
Date:	Student Name:
In the case of a homeless student (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 44434a(2)). Contact information:	
Signature/Date: (Party Requesting the Mediation)	
Briefly describe the issue(s) for which the mediation is being requested, including any related facts (Attach additional information, if necessary.)	
If known, please state a proposed resolution to the issue(s). (Attach additional information, if necessary)	
A mediation request must be signed by the party requesting the mediation. The request must contain an original signature. Facsimiles or e-mails will not be accepted.	

MAIL TO: West Virginia Department of Education
Office of Special Programs
1900 Kanawha Boulevard, East
Building 6, Room 330
Charleston, West Virginia 25305

Due Process Complaint Withdrawal

_____ County Schools
(district's name)

Due Process Complaint No.:	Hearing Officer:
District Representative:	Parent(s)/Guardian(s):
Date:	Student Name:

The initiating party has formally withdrawn the Due Process Complaint request. The parties have participated in a resolution meeting or mediation on _____ (date) and have resolved the issues forming the basis of the due process complaint.

Parent(s)/Guardian(s) Signatures:

Date

Date

The parties understand this agreement is voluntary, legally binding and enforceable in any State court of competent jurisdiction or in a district court of the United States. A party may void the agreement within 3 **business days** of the agreement's execution date.

Authorized School Official Signature

Date

Parent(s)/Guardian(s) Signatures

Date

School Official(s)/District Representative(s) with Titles in Attendance
Signatures

Date

