I Wonder Wonder Who Shabadoo Who Wrote The...: How To Write Up Mediation/Resolution Agreements; State Complaint Investigation Reports; Hearing Officer Decisions

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I. INTRODUCTION

There are four dispute resolution mechanisms provided by the Individuals with Disabilities Education Act, 20 U.S.C. § 1400, et seq, (hereafter sometimes referred to as "IDEA") and the accompanying federal regulations: mediation, state complaints, resolution sessions, and due process hearings. A fifth method of dispute resolution- the facilitated IEP team meeting- has been successfully implemented in many states, but a written final document is not generally a part of the facilitator's responsibility.

Each dispute resolution method may require some document to be written up at the end of the process. Where mediation or the resolution meeting results in a settlement, a written agreement is necessary. A state complaint investigator concludes the process with a written report. A due process hearing officer writes a decision. In each case the written product is critical to the dispute resolution process.

The decision, report or agreement is the only portion of our work that many people ever see. Our written documents should reflect well upon us; they are our **professional product**. It is extremely important, therefore, that our decisions and reports be well reasoned and that all documents be understandable, clear and well written. They are the conclusion of the dispute resolution process, and, accordingly, are extremely important to the parties, and the child with a disability. Reviewing courts and officers receive no other communications from us. Our decisions and agreements represent us to the rest of the world. Our reputations as dispute resolution professionals depend upon **high quality** written products.

Legal Citations for IDEA Dispute Resolution:

State complaints procedures are set forth in the federal regulations at 34 C.F.R. §§ 300.151 – 300.153.

Mediation is provided for in IDEA at § 615(e). See 34 C.F.R. § 300.506.

Due process hearings (as well as resolution sessions) are described in the IDEA at § 615 generally, especially sub§ (f) and (k). See, 34 C.F.R. § 300.507 to 300.515, and 300.532 to 300.533.

Here is a recent Q & A document from OSEP on Dispute Resolution Procedures under IDEA Part B. For mediation, see Q A-1 to A-28; for state complaint procedures, see Q B-1 to B- 34; for due process, see Q C-1 to C-27; for the resolution process, see Q D-1 to D-25, and for expedited hearings see Q E-1 to E-9:

http://www.directionservice.org/cadre/pdf/OSEP_Q&A_memo7-23-13.pdf

This link is to the NICHCY Training Program – Module 18: Options for Dispute Resolution:

http://www.nichcy.org/Laws/IDEA/Pages/module18.aspx

II. Mediation Agreements

A. Basic Principles

A mediation **agreement** must state that mediation discussions are confidential and may not be used in a subsequent due process hearing or court proceeding. § 615(e)(2)(F)(i); 34 CFR § 300.506 (b)(6)(i). IDEA specifically provides that mediation agreements are enforceable in court. § 615(e)(2)(F)(iii); 34 CFR § 300.506 (b)(7). OSEP has noted that nothing prevents parties to a mediation from agreeing to have the mediator facilitate an IEP team meeting, but IDEA does not require that an IEP team incorporate the terms of a mediation agreement into an IEP. 71 Fed. Register No. 156 at page 46695 (August 14, 2006).

B. Mediation Agreement Writing

1. Some samples:

CADRE Sample Mediation Agreement:
http://www.directionservice.org/cadre/exemplar/artifacts/SC-2%20Mediation%20Agreement%20-%20Sample%202.pdf

Mediation Agreement template- Alabama
http://www.directionservice.org/cadre/sampleform30.cfm

Mediation Agreement template- Pennsylvania
http://www.directionservice.org/cadre/pdf/Mediation%20Agreement.pdf

2. Components:

A Mandatory:

(1) statement that discussions are confidential §615(e)(2)(F); 34 CFR §300.506(b)(6)(i)

(2) signed by parent and rep of LEA w/authority to bind. §615(e))(2)(F); 34 CFR §300.506(b)(6)(ii)

B. Other

(1) Statement that Petitioners agree to dismiss dpc

(2) Specific agreements {BE SPECIFIC: what agreements made, precisely what actions to be taken and by whom, WHEN, time period/duration of the agreement, clearly defined terms, as detailed as possible.}

(3) Reciprocal if possible

(4) Because agreement is binding in court, no need for IEPT approval of provisions.

(5) Include Date; specify timeframes for compliance

(6) opening K language: "In consideration of the mutual covenants and agreements herein set forth, the parties agree as follows:

(7) If the parties so intend, include a provision such as “parent/adult student agrees to dismiss the due process hearing “{Docket # …} [Consider a separate document prewritten to be signed by parents]

(8) Date {especially if some action is to happen within a certain period of time from the date of the agreement} & Signatures (parent and LEA rep authorized to bind LEA}

(9) other language: understandable but precise

(10) enforceable in court?

(11) Best Practice: read agreement aloud before all parties sign {especially where literacy concerns}

ADDITIONAL RESOURCES for MEDIATORS: In addition to the general IDEA resources, mediators should frequently visit the CADRE website. The Consortium for Appropriate Dispute Resolution in Special Education is an OSEP funded group that encourages mediation, IEP facilitation and other means of special education dispute resolution that are less formal and legalistic than due process hearings. Their website is loaded with helpful articles, materials and other information and may be found at http://www.directionservice.org/cadre/index.cfm

Excerpt from OSEP Questions & Answers On IDEA Part B Dispute Resolution:

Question A-22: If the parties to the mediation process resolve their dispute, must the agreement reached by the parties be **in writing**? Answer: Yes. If the parties resolve a dispute through the mediation process, the parties must execute a legally binding written agreement that sets forth that resolution and states that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding. In order for the agreement to be legally binding, it must be in writing. The agreement must be signed by both the parent and a representative of the public agency who has the authority to bind the agency. 34 CFR §300.506(b)(6). It is important that the parties understand that the mediation agreement is legally binding and that it is enforceable in any State court of competent jurisdiction or in a district court of the United States or by the SEA, if

applicable. 34 CFR §§300.506(b)(7) and 300.537. Parties are free to consult with others before entering into a mediation agreement.

Question A-23: Are discussions that occur in the mediation process automatically confidential or is the confidentiality of the mediation session a matter that must be mediated and documented as a part of the mediation agreement? Answer: Under 34 CFR §300.506(b)(8), discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding of any Federal court or State court of a State receiving assistance under 34 CFR part 300. This requirement is automatic and may not be altered or modified by parties to mediation conducted under 34 CFR §300.506. Further, this confidentiality requirement applies regardless of whether the parties resolve a dispute through the mediation process. If the parties resolve a dispute through the mediation process, they must execute **a legally binding agreement that also includes a statement** that all discussions that occurred during the mediation process will remain confidential. 34 CFR §300.506(b)(6)(i).

Question A-24: Must a written mediation agreement be kept **confidential**? Answer: While discussions that occur during the mediation process must be confidential, neither the IDEA nor its implementing regulations specifically address whether the mediation agreement itself must remain confidential. However, the confidentiality of information provisions in the Part B regulations in 34 CFR §§300.611-300.626 and the Family Educational Rights and Privacy Act (FERPA), and its implementing regulations in 34 CFR part 99 would apply. Further, there is nothing in the IDEA or its implementing regulations that would prohibit the parties from agreeing voluntarily to include in their mediation agreement a provision that limits disclosure of the mediation agreement, in whole or in part, to third parties. Also, there is nothing in the IDEA that would prohibit the parties from agreeing to permit the agreement to be released to the public.

II. Resolution Agreements

A mandatory resolution session was added to the special education dispute resolution process in 2004. IDEA § 615 (f)(1)(B). Within 15 days of receipt of a due process hearing complaint from a parent, the school district must convene a meeting with the parents, a representative of the LEA with "decision making authority," and relevant member(s) of the IEP team who have "specific knowledge of the facts identified in the complaint." The purpose of the resolution session is to permit the parents to discuss their complaint and the underlying facts and to provide the LEA the opportunity to resolve the complaint.

If the resolution session results in a written settlement agreement, the agreement is legally binding and enforceable in court, except that if either party suffers from "buyer's remorse," they may void the agreement within three business days after it is executed. § 615(f)(1)(B)(iii) and (iv).

Unless the resolution agreement specifically requires the IEPT to convene, IDEA does not require that the IEPT be reconvened to adopt the agreement. The resolution agreement provisions may supercede an existing IEP. 71 Fed. Register No. 156 at page 46703 (August 14, 2006).

Writing a Good Resolution Agreement:

1 Contents

a. Caption (name Parties; Docket #, etc)

b. Body "The parties agree as follows:

1. ________________
2. ________________
3. ________________

{BE SPECIFIC: what agreements made, precisely what actions to be taken and by whom, WHEN, time period/duration of the agreement, clearly defined terms, as detailed as possible.}

c. If the parties so intend, include a provision such as "parent/adult student agrees to dismiss the due process hearing "{Docket # …} [Consider a separate document prewritten to be signed by parents]

d. Date {especially if some action is to happen within a certain period of time from the date of the agreement} & Signatures (parent and LEA rep authorized to bind LEA}

e. Best Practice: read agreement aloud before all parties sign {especially where literacy concerns}

f. Some Sample Resolution Agreements:

Iowa Template:
http://www.directionservice.org/cadre/sampleform35.cfm

Oklahoma Template:
http://www.directionservice.org/cadre/exemplar/artifacts/OK-20%20Resolution%20Agreement%20form.pdf

Excerpt from OSEP Questions & Answers On IDEA Part B Dispute Resolution:

Question D-19: Must a settlement agreement be signed and executed at the resolution meeting, or may a settlement agreement be signed and executed by the parties prior to the conclusion of the 30-day resolution period? Answer: Pursuant to 34 CFR §300.510(d), if a resolution to the dispute is reached at the resolution meeting, the parties **must execute a legally binding agreement**. Either party may void the agreement within three business days of the agreement's execution. This regulation contemplates that an agreement may not be finalized at the resolution meeting and therefore allows for a 30-day resolution period. At a time subsequent to the resolution meeting, the parties may have additional discussions and may execute a written settlement agreement within the 30-day resolution period. **Only** a legally binding **agreemen**t reached **during the 30-day period** that meets the requirements of 34 CFR §300.510(d) and (e), is considered an agreement under the resolution process requirements.

Question D-20: If the parties reach agreement on all issues in the parent's due process complaint and execute a written settlement agreement, what happens to the **due process complaint**? Answer: The Part B regulations do not address the status of the due process complaint or which party is responsible for requesting that the due process complaint be dismissed or withdrawn once a resolution agreement is reached and the three business-day review period has passed. Such matters are left to the discretion of the State and the hearing officer.

Question D-21: How can written **settlement agreements** reached through IDEA's resolution process be **enforced** if a party believes the agreement is not being implemented? Answer: A written settlement agreement reached through IDEA's resolution process is enforceable in any State court of competent jurisdiction or in a district court of the United States. 34 CFR §300.510(d)(2). Even though this regulation provides for judicial enforcement of resolution agreements, it also provides an SEA the option of using other mechanisms or procedures that permit parties to seek enforcement of resolution agreements. However, this can occur only if use of those mechanisms is not mandatory and does not delay or deny a party the right to seek enforcement of the written agreement in an appropriate State or Federal court. 34 CFR §300.537.

III. State Complaint Investigation Reports

Each state education agency must maintain a state complaint procedure as one of the dispute resolution mechanisms under IDEA. 34 C.F.R. §§300.151-300.153. OSEP has stated that the state complaint system is required pursuant to the general supervisory responsibility of the SEA, even though Congress has not specifically provided or addressed a state complaint system in the IDEA. Analysis of Comments, 71 Fed. Register No. 156 at page 46606 (OSEP August 14, 2006).

- After reviewing all relevant information, the complaint investigator must make an independent decision as to whether IDEA has been violated and issue a written decision that addresses each allegation and contains findings of fact and the reasons supporting the SEA's final decision. 34 C.F.R. §300.152(a)(4)and (5)
- Where a state complaint investigator finds that IDEA has been violated, a corrective action is ordered. The relief that may be awarded includes compensatory education and reimbursement. 34 C.F.R. § 300.151(b). The purpose of this change to the federal regulations in 2006 was to make it clear that states have broad flexibility in awarding an appropriate remedy, including awarding monetary reimbursement and compensatory services, in resolving state complaints. Analysis of Comments, 71 Fed. Register No. 156 at page 46602 (OSEP August 14, 2006).

The report/decision of the complaint investigator should have the following components:

- A brief Introduction
- A Statement of the Issue(s) Presented
- Findings of Fact
- A Conclusion or Resolution as to Each Issue
- Discussion or Similar Section Explaining Your Reasoning

Some Sample State Complaint Report Templates:

Michigan State Complaint Report Template:
http://www.directionservice.org/cadre/exemplar/artifacts/MI-4%20StateLevelFinalInvestigationReport%2012.15.10.pdf

Idaho Corrective Action Template:
http://www.directionservice.org/cadre/exemplar/artifacts/ID-13%20CAP%20Template.pdf

Concerning the findings of fact, the report/decision should find facts. Your findings of fact should be written as facts; they are not contentions, they are facts. You should include only facts of decisional significance. (Although there are many good ways to write a decision, if you are having trouble determining which facts are decisionally significant, consider writing the findings of fact last.)

Findings should be carefully prepared. Findings of fact should not simply regurgitate the interviews.

Because they are facts, findings should also not be inferences. You can explain your logic in the discussion section of your report/decision. Similarly, findings are no place for contentions of the parties.

Generally findings should be stated in the past tense. The facts being found almost always have happened prior to the hearing. Definite language is preferred over uncertain language. Findings should be stated as simple facts and not qualified unless necessary to reflect the record accurately. For example, findings should not include…"it appears that," "it seems that" or "tends to be."

The investigator should anchor each finding to the record, either a document or the interview of a witness or both.

It is critical that the complaint investigator explain her reasoning as to each conclusion. This helps with future compliance as well as with understanding of the current violation. It also helps a parent understand the decision. If the key constitutional theme underlying the investigation is the right to be heard, the theme underlying the report/decision is the right to know why. Both are critical components of due process. Explain your ruling(s) in your report/decision.

Be mindful of your audience. The parents and the public agency staff should be able to read and understand the report/decision. Avoid legalese and school jargon. Use plain English to the extent possible. Be clear. Unless it is necessary for clarity, don't use charts, footnotes, or graphs. Try to make sure that your decision will be understood by its readers. Avoid Latin and other foreign language words or phrases. Simple and plain language is preferable. If the timelines permit, a good technique is to prepare a draft, sleep on it, redraft it, sleep on it again, and then finalize it.

Be concise. Avoid excessive verbiage. Economy of words is appreciated by the parties as well as reviewing officers and courts. Say what must be said so that the parties understand the outcome, so that the SEA can implement the decision/report, and then stop. This may take a few pages. It is clear, however, that nobody wants to read a telephone book.

If you find the school district to be in compliance note that there was insufficient evidence to support a finding of non-compliance. If you find a violation, order corrective action designed to correct the problem. Use clear language so that the Order may be implemented. Include what, how, where and especially when. Use mandatory (shall) language. Also state what verification documentation must be submitted and the due date for such documentation. In addition explain what technical assistance resources are available from the SEA.

Sign and date the report/decision.

Excerpt from OSEP Questions & Answers On IDEA Part B Dispute Resolution:

Question B-30: Once an SEA resolves a State complaint, **what must the SEA's written decision contain**? Answer: Within 60 days of the date that the complaint was filed, subject to allowable extensions, an SEA is required to issue a written decision to the complainant that addresses each allegation in the complaint and contains: (1) findings of fact and conclusions; and (2) the reasons for the SEA's final decision. 34 CFR §300.152(a)(5). In addition, under 34 CFR §300.152(b)(2), the SEA must have procedures for effective implementation of its final decision, if needed, including technical assistance activities, negotiations, and corrective actions to achieve compliance. Therefore, if necessary to implement the SEA's final decision, the SEA's written decision must contain remedies for the denial of appropriate services, including corrective

actions that are appropriate to address the needs of the child or group of children involved in the complaint. If appropriate, remedies could include compensatory services or monetary reimbursement, and measures to ensure appropriate future provision of services for all children with disabilities. 34 CFR §300.151(b).

IV. Hearing Officer Decisions

A reasoned decision is a constitutional requirement for an administrative proceeding. Goldberg v. Kelly 397 U.S. 254, 271 (1970). The hearing officer's decision also fulfils the judicially mandated requirement that government provide reasons for its actions. Wichita R. & Light Co. v. Pub. Util. Comm. 260 U. S. 57-59 (1922). The requirement of a reasoned explanation in the form of a decision helps ensure a fair and careful consideration of the evidence and provides assistance to the reviewing courts. Citizens to Preserve Overton Park v. Volpe 401 U. S. 402 (1971).

Our decisions should reflect well upon us; they are our professional product. It is extremely important, therefore, that our decisions be well reasoned and well written. Reviewing courts and officers receive no other communications from us. Our decisions represent us to the rest of the world. Our reputations as hearing officers depend upon high quality written decisions.

The decision is also the final administrative ruling for the parent/student and for the school district. It is imperative that they be able to understand the result of the hearing by reading the decision

Despite the critical importance of the hearing officer decision, there is very little guidance in the statute or regulations concerning the hearing officer's decision. The IDEA provides only that parties have the right to a written, or at the option on the parents an electronic, decision with findings of fact, and that the decision is final subject to appeal. Sections 615(h) and 615(i)(1)(A). The IDEA'04 amendments add that

the hearing officer must be able to write decisions in accordance with appropriate, standard legal practice; that a decision about FAPE must be made upon substantive grounds; and that a decision based upon a procedural violation denying FAPE must find that the procedural inadequacy impeded FAPE or the parents' right to participate or caused a deprivation of educational benefits; and that despite the restriction on procedural rulings, a hearing officer may order a district to comply with IDEA requirements. Sections 615(f)(3)(A)(iv), and 615(f)(3)(E). The federal regulations paraphrase the statutory requirements. 34 C.F.R. Sections 300.512 (a)(5), 300.513, and 300.514(a); 71 Fed. Register No. 156 at page 46705 (August 14, 2006). In addition, the federal regulations add the timelines for the hearing officer decision- requiring a decision within 45 days of the end of any resolution period, pending various potential adjustments. 34 C.F.R. Sections 300.515. In discussing the new federal regulations, the U. S. Department of Education has clarified that a hearing officer still has the authority to issue a decision upon the issue of LRE despite the IDEA'04 amendments. The analysis of comments states that although IDEA'04 and the new regulations impose a new requirement that determinations as to whether a child has received FAPE must be on substantive grounds, "hearing officers continue to have the discretion to …make rulings on matters in addition to those concerning the provision of FAPE…" Federal Register, Vol. 71, No. 156 at p. 46706-7 (August 14, 2006).

Excerpt from OSEP Questions & Answers On IDEA Part B Dispute Resolution:
http://www.directionservice.org/cadre/pdf/OSEP_Q&A_memo7-23-13.pdf

Question C-21: Once the 30-day resolution period or adjusted resolution period expires, what is the **timeline for issuing a final hearing decision**?

Answer: The public agency conducting the due process hearing (either the SEA or the public agency directly responsible for the education of the child) must ensure that not later than 45 days after the expiration of the 30-day resolution period described in 34 CFR §300.510(b) or the adjustments to the time period permitted in 34 CFR §300.510(c), a final decision is reached in the due process hearing and a copy of the decision is mailed to each of the parties. The SEA is responsible for monitoring compliance with this timeline, subject to any allowable extensions described in Question C-22. 34 CFR §§300.149 and 300.600.

Question C-22: When would it be permissible for a hearing officer to **extend the 45-day timeline for issuing a final decision** in a due process hearing on a due process complaint or for a reviewing officer to extend the 30-day timeline for issuing a final decision in an appeal to the

SEA, if applicable? Answer: The timelines for due process hearings and reviews described in 34 CFR §300.515(a) and (b) may only be extended if a hearing officer or reviewing officer exercises the authority to grant a specific extension of time at the request of a party to the hearing or review. 34 CFR §300.515(c). A hearing officer may not unilaterally extend the 45-day due process hearing timeline. Also, a hearing officer may not extend the hearing decision timeline for an unspecified time period, even if a party to the hearing requests an extension but does not specify a time period for the extension. Likewise, a reviewing officer may not unilaterally extend the 30-day timeline for reviewing the hearing decision. In addition, a reviewing officer may not extend the review decision timeline for an unspecified time period, even if a party to the review requests an extension but does not specify a time period for the extension.

Question C-23: If an **SEA contracts with another agency** to conduct due process hearings on its behalf, can those decisions be appealed to the SEA? Answer: No. In a one-tier system, the SEA conducts due process hearings. In a two tier system, the public agency directly responsible for the education of the child conducts due process hearings. The determination of which entity conducts due process hearings is based on State statute, State regulation, or a written policy of the SEA. 34 CFR §300.511(b). In a one-tier system, a party Questions and Answers on IDEA Part B Dispute Resolution Procedures Page 45 aggrieved by the SEA's findings and decision has the right to appeal by bringing a civil action in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy. 34 CFR §300.516(a). In a one-tier system, an aggrieved party has no right of appeal to the SEA. However, in a two-tier system, an aggrieved party has the right to appeal the public agency's decision to the SEA which must conduct an impartial review of the findings and decision appealed. 34 CFR §300.514(b). A party dissatisfied with the decision of the SEA's reviewing official has the right to bring a civil action in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy. 34 CFR §§300.514(d) and 300.516(a). There is nothing in the IDEA that would prohibit a State with a one-tier due process system from carrying out its responsibility by retaining impartial hearing officers under contract to conduct the hearings or contracting with another agency that is not a public agency under the IDEA to conduct the hearings. Because the SEA is the entity responsible for conducting the hearing, there is no right of appeal to the SEA.

Question C-25: Are **"motions for reconsideration"** permitted after a hearing officer has issued findings of fact and a decision in a due process hearing? Answer: As explained in Question C-23, in a one-tier system where the due process hearing is conducted by the SEA, or its agent, a party does not have the right to appeal a decision to the SEA or make a motion for reconsideration. Under 34 CFR §300.514(a), a decision made in a due process hearing conducted by the SEA is final, except that a party aggrieved by that decision may appeal the decision by bringing a civil action in any State court of competent jurisdiction or in a district court of the United States under 34 CFR §300.516. Once a final decision has been issued, no motion for reconsideration is permissible. However, a State can allow motions for reconsideration prior to issuing a final decision, but the final decision must be issued within the 45- day timeline or a properly extended timeline. For example, motions for reconsideration of interim orders made during the hearing would be permissible as long as the final decision is issued within the 45-day timeline or a properly extended timeline. Proper notice should be given to parents if State procedures allow for amendments and a reconsideration process may not delay or deny parents' right to a decision within the time periods specified for hearings and appeals. 64 FR 12614 (March 12, 1999). There may be situations in which the final due process hearing decision

contains technical or typographical errors. It is permissible for a party to request correction of such errors when the correction does not change the outcome of the hearing or substance of the final hearing decision. This type of request does not constitute a request for reconsideration as discussed within this response.

Question C-26: What is the **SEA's responsibility** after a due process hearing decision is issued? Answer: Hearing decisions must be **implemented** within the timeframe prescribed by the hearing officer, or if there is no timeframe prescribed by the hearing officer, within a reasonable timeframe set by the State as required by 34 CFR §§300.511-300.514. The SEA, pursuant to its general supervisory responsibility under 34 CFR §§300.149 and 300.600, must ensure that the public agency involved in the due process hearing implements the hearing Questions and Answers on IDEA Part B Dispute Resolution Procedures Page 47 officer's decision in a timely manner, unless either party appeals the decision. If necessary to achieve compliance from the LEA, the SEA may use appropriate enforcement actions consistent with its general supervisory responsibility under 34 CFR §§300.600 and 300.608.

Question C-27: Which public agency is responsible for **transmitting** the findings and **decision**s in a hearing to the State advisory panel (SAP) and making those findings and decisions available to the public? Answer: The entity that is responsible for conducting the hearing transmits the findings and decisions to the SAP and makes them available to the public. In a two tier system where the hearing is conducted by the public agency directly responsible for the education of the child (i.e., the LEA), that public agency, after deleting any personally identifiable information, must transmit the findings and decisions in the hearing to the SAP and make those findings and decisions available to the public. In a one-tier system where the hearing is conducted by the SEA, the SEA must first delete any personally identifiable information and then transmit the findings and decisions in the hearing to the SAP and make those findings and decisions available to the public. 34 CFR §300.513(d). If a State has a two-tier due process system and the decision is appealed, the SEA, after deleting any personally identifiable information, must transmit the findings and decisions in the review to the SAP and make those findings and decisions available to the public. 34 CFR §300.514(c). In carrying out these responsibilities, SEAs and LEAs must comply with the confidentiality of information provisions in 34 CFR §§300.611-300.626. 34 CFR §300.610. OSEP has advised that in a one-tier due process system, the SEA may meet these requirements by means such as posting the redacted decisions on its Web site or another Web site location dedicated for this purpose and directing SAP members or members of the public to that information.

Some states have regulations, policies, rules or manuals that provide further guidance on the matter of hearing officer decisions. Hearing officers should be aware of any such regulations or policies and apply them in their decisions.

Top Eight General Rules for Writing a Decision

Although the style of decision writing by hearing officers varies widely, there are some general rules that apply to good decisions. The following eight general rules have been derived from my experience as a hearing officer. These general rules provide some basic guidance on decision writing.

1. **Be Fair**
2. **Appear to be Fair**
3. **Be Careful, Thorough and Thoughtful**
4. **Find Facts**
5. **Apply the Rule of Law: Make and Explain Conclusions**
6. **Resolve All Issues/ State Reasons**
7. **Make a Clear Order/ Award Relief**
8. **Be Clear and Concise**

Some sample hearing officer decisions:

Connecticut decision:
http://www.sde.ct.gov/sde/lib/sde/PDF/DEPS/Special/Hearing_Decisions/2013/13_0300and13_0341.pdf

Utah decision:
http://www.schools.utah.gov/sars/Laws/Dispute/2014Alpine.aspx

West Virginia decision:
https://wvde.state.wv.us/osp/compliance/documents/D09-014.pdf

Pennsylvania decision:
http://odr-pa.org/uploads/hearingofficerdecisions/14254-13-14.pdf

V. Caselaw Concerning Agreements/Decisions/Reports

A. Mediation and Resolution Agreements

1. South Kingston Sch Committee v Joanna S ex rel PJS 64 IDELR 191 (1st Cir 12/9/14) First Circuit held that a settlement agreement provision whereby the parent agreed to **waive any and all** causes of action of which the parent knew or should have known at the time that she signed the agreement did **not waive** any **unforeseeable** grounds for a complaint. But here the new request for a psychoeducational evaluation was among the many issues resolved by the previous settlement and was therefore foreseeable and waived by the settlement agreement.

2. KD by CL v. Dept of Educ, State of Hawaii 58 IDELR 2 (9th Cir 12/27/11) Ninth Circuit held that the language of a settlement agreement prevented a private school from being the "as agreed" **stay put** placement. The agreement provided that the LEA would pay for a private school program for a specific period of time rather than merely agreeing to place the child in a private school. Therefore, LEA had no obligation to pay for the private school after the period of time designated in the agreement lapsed.

3. Egs of Bad Language, Etc in Agreement: Irvine Unified Sch Dist 53 IDELR 204 (SEA Calif 9/28/9) HO held that IDEA settlement **waiver** releasing district from"… violations that might occur as a result of this agreement…" was ambiguous and did not prevent parents from pursuing a reevaluation claim; Somoza v. New York City Dept of Educ 107 LRP 10339 (S.D.NY 2/21/7) The federal court held that **waiver** of future IDEA claims constitutes waiver of a vital civil right requiring highest scrutiny by the courts. Where a pro se parent signed an ambiguous settlement agreement resulting from a boilerplate form settlement and received no adequate explanation of the terms of the agreement, the court found the waiver of IDEA claims to be ineffective. Any such waiver must be knowingly and voluntarily given. Matunuska-Susitna Borough Sch Dist v DY ex rel BY 54 IDELR 52 (D Alaska 2/23/10) Court ruled that even though a mediation **agreement** was from the same year, parents could still challenge LRE violation where prior

complaint concerned only implementation????; YG v. Riverside Unified Sch Dist 774 F.Supp.2d 1055, 56 IDELR 96 (CD Calif 2/28/11) Court refused to enforce a settlement agreement and release to bar parent's complaint where the settlement resulted from **unreasonable** time constraints and a take it or leave it approach. Court ruled that interpretation of a release involving IDEA rights was a matter of **federal** and not state law. Contrast, District of Columbia Public Schs (JG) 111 LRP 70973 (SEA DC 4/30/11) Where parent signed a **release** of all IDEA claims that she could have asserted by a date certain, HO ruled that all claims arising before that date were barred; Medici v Pocono Mountain Sch Dist 56 IDELR 285 (MD Penna 6/22/11) Court ruled that where the plain language of a release which was part of an IDEA settlement precluded the filing of any future claims re the child's education, court dismissed a §1983 action concerning educational records; Bristol Township Sch Dist v. SW ex rel SM 55 IDELR 103 (ED Penna 9/3/10) Court ruled that a settlement release covered all claims against a district that could have been raised even though not included in the current complaint. Court rejected argument that parent did not intend release to be so broad. See 55 IDELR 72 (Mgst J decis)(same case); RN by RN v. Buffalo City Sch Dist Bd of Educ 58 IDELR 5 (WD NY 12/2/11) Court dismissed parent claim where settlement had resolved issues involving the student but permitted parent to bring systemic issues but complaint alleged only vague systemic issues that FAPE issues faced by student were widespread; Amy S. v. Danbury Local Sch. Dist. 106 LRP 2067 (6th Cir. 3/31/6). The Sixth Circuit affirmed the dismissal of the parents IDEA claims where the parents had signed a mediation agreement unambiguously stating that it resolves all pending IDEA issues; Carney ex rel Carney v. State of Nevada 50 IDELR 253 (D. Nevada 7/29/8) IDEA settlement agreement did not bar 504 and ADA claims where the agreement reserved the right of the parents to seek relief for tort claims; Stephen H by Horsley v. Contra Costa County Unified Sch Dist 48 IDELR 38 (N.D. Calif 5/29/7). Court refused to dismiss a parent claim of improper training of district teachers where a poorly worded resolution meeting release did not waive all claims against the district. See, Howard ex rel DH v. District of Columbia 49 IDELR 5 (D. DC 11/6/7).

4. AS & RS ex rel SS v Office for Dispute Resolution, Quakertown Community Sch Dist 62 IDELR 239 (Penna

Commonwealth Ct 1/24/14) Majority of state court held that a settlement was binding even though parents and their lawyer **changed the terms of the agreement** (including reimbursement for private services) without telling SD. District ratified the changes by signing the agreement{**reversing** this HO decision: Quakertown Community Sch Dist (LV) 113 LRP 23564 (SEA Penna 5/3/13) HO concluded that there was **no settlement**. The parties agreed, counsel for the district prepared an agreement, parents then changed language in the agreement and signed and returned the altered document}; JB & HB ex rel BB v Lake Washington Sch Dist 60 IDELR 130 (WD Wash 1/17/13) Court ruled that a settlement with a California school district was not binding upon a district in Washington state after the student transferred; Pagan-Negron ex rel CMP v Seguin Independent Sch Dist 62 IDELR 11 (WD Tex 9/24/13) Court ruled that a settlement agreement barring claims under IDEA does not prevent parent from filing lawsuit under §504/ADA.

5. Bd of Educ of Plainfield Community Council Sch Dist 202 v Ill State Bd of Educ 63 IDELR 40 (D Ill 3/26/14) Court granted **SD motion to enforce** an IDEA **mediation agreement**, rejecting parent claims that she signed agreement under **duress**, was strong-armed and received nothing of benefit. Court noted that settlement was a compromise between the positions of the two parties concerning the transition of twins from a private school to a public school. No evidence of duress.

6. Fortes-Cortes v Dept of Educ 60 IDELR 251 (DPR 3/12/13) Where **resolution agreement** stated that Department would reimburse 20 round trips for transportation to location where student received therapy and there was no language that reimbursement was only temporary, the annual IEP review does not change the agreement unless student no longer needs the therapy; ADL by Lindstrom v Cinnaminson Township Bd of Educ 62 IDELR 7 (DNJ 9/26/13) Court ruled that where parent and district agreed to extend a student's residential placement for one year beyond the terms of a consent order, the provision of the consent order concerning reimbursement for transportation (@$285/day) no longer applied.

7. SD by Brown v Moreland Sch Dist 64 IDELR 205 (ND Calif 11/25/14) Court approved of settlement as **fair** and in the student's **best interest**; DC by TC v Oakdale Joint Unified Sch Dist 113 LRP 3443(ED Calif 1/23/13) Court approved as **fair** and reasonable a settlement of

$65,000 for IDEA claim of improper restraint od student with ADHD causing an ankle injury; CM by PM & JM v Svosset Central Sch Dist 62 IDELR 106 (EDNY 11/22/13) Court adopted Mgst approval of settlement(Mgst recommendation at 62 IDELR 85); CM by PM & JM v Svosset Sch Dist 61 IDELR 254 (ED NY 8/9/13) Mgst recommended that court **not approve** a $17,500 settlement of parents IDEA, 504 and ADA suit where parent attorney had done no discovery and the entire amount would have gone to pay off a home equity **loan** parents took out to pay a **hefty fee** to their lawyers; GR v Brentwood Union Sch Dist 61 IDELR 124 (ND Calif 7/5/13)Court ruled that where a settlement offer from a school district **wrongfully required** the parents to **refrain from filing** any claims against the district for the upcoming school year, the parents were justified in rejecting the settlement and the fact that the offer was more favorable than what parents eventually received, the unreasonable offer did not cut off parent attorney fees at that point.

8. VM & KM ex rel DM v. Brookland Sch Dist 50 IDELR 100 (E.D. Ark. 5/6/8) Where HO incorporated a settlement agreement into his decision and ordered school district to provide relief, there was sufficient judicial imprimatur to confer prevailing party status for attorneys fees.

9. AM v. Westside Union Sch Dist 51 IDELR 47 (C.D. Calif 7/25/8) Purported breach of an IDEA settlement is not a constitutional violation giving rise to a § 1983 cause of action.

10. New York City Dept of Educ 106 LRP 39990 (SEA NY 6/21/6), a resolution meeting was held on Wednesday December 7th, and the parties entered into a settlement agreement. On December 12th, the parent sent the district a letter voiding the agreement. Because the letter was mailed within three business days of the agreement, the state review officer held that the settlement agreement was properly invalidated within the buyer's remorse period and the matter could proceed to hearing.

11. In El Paso Independent Sch Dist v. Richard R ex rel RR 53 IDELR 175 (5th Cir 12/16/9) Fifth Circuit held that agreements from resolution session are **enforceable**. Accordingly a parent's refusal to accept an offer of all educational relief sought was unreasonable and no attorney's fees were awarded to parent's lawyer; Gary G ex rel GG v. El Paso Independent Sch Dist 632 F.3d 56 IDELR 32 (5th Cir. 1/31/11) The Fifth Circuit reduced the parents attorneys fees by 93% where the

parents and their lawyer rejected a settlement at resolution session and received less. Parents contended that a settlement at a resolution session was unenforceable. Fifth Circuit disagreed. Court noted that failure to include attorney's fees in a settlement offer may be valid grounds for refusal in some cases but not here where attorney had only 13.8 hours in the case at the time.

12. The issue of the presence of the school district lawyer was presented in Mr & Mrs S ex rel BS v. Rochester Community Schs 106 LRP 58719 (W.D. Mich. 10/2/6). The parents were dissatisfied with the district evaluation and requested an IEE at public expense. The district felt that its evaluation was appropriate and filed a due process complaint. A resolution meeting was scheduled and the district's attorney arrived before the meeting to review documents and to train school personnel for the resolution meeting. The attorney left before the meeting began. After two hours, the parties reached an initial agreement. The district personnel brought the agreement down the hall to their lawyer who retyped it adding legal language. After subsequent revisions, the parties signed the agreement. The parents then faxed the agreement to their lawyer who advised them that the agreement gave up their right to an IEE. Upon learning what the agreement meant, the parents rescinded the agreement immediately. The parents then filed a state complaint, and the SEA found a violation of the IDEA issuing a corrective order requiring district personnel to notify all resolution process participants if a parent does not have an attorney present, an LEA may not have an attorney participate in the resolution process from the beginning until the end. The court reversed holding that there is a distinction between the resolution meeting and the agreement creation period. The court held that the ban on LEA lawyers, and the restriction on fees for parent attorneys, applies only to the resolution meeting itself and not to the agreement drafting period. The court noted that the LEA attorney may not be physically present or listen in over the telephone or confer with participants during the resolution meeting only. The Court also noted that the participation of the lawyer should apply only to the conversion of the substantive agreement to a legally enforceable agreement. The Court declined to review the alleged ethical violations by the district's lawyer because the state Attorney Grievance Committee was the proper forum for such

complaints. Mr & Mrs S ex rel BS v. Rochester Community Schs 106 LRP 58719 (W.D. Mich. 10/2/6).

13. ADDITIONAL RESOURCE: Mark C Weber, "Settling IDEA Cases: Making Up is Hard to Do," (09/05/09), Loyola of Los Angeles Law Review (2010), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1446008

B. State Complaint Investigation Reports

1. A complaint investigator must resolve a state complaint. An investigator may not rule that she was unable to determine whether the district violated IDEA. If more information is necessary, the investigation must continue until a determination may be made. Manalansan v Bd of Educ Baltimore City 35 IDELR 122 (D. Md 2001).

2. Letter to Reilly 64 IDELR 219 (OSEP 11/3/14) In a state complaint, the parent does **not** have the **burden of proof**. Once a complaint is filed, the SEA has the obligation to investigate, collect evidence and reach a conclusion. OSEP noted that a **preponderance** of the evidence standard for determining whether there has been a violation is consistent with IDEA.

C. Hearing Officer Decisions

1. LO by DO & DO v East Allen County Sch Corp 64 IDELR 147 (ND Ind 9/30/14) Court reversed and vacated **inconsistent** HO decision. HO found that student was clearly not eligible in 09-10 school year and that SD had failed to implement 10-11 IEP and awarded compensatory education. After SD pointed to certain evidence, HO issued an amended decision ordering compensatory education for failing to find the student eligible in 09-10 school year. Court found that the change to the decision was contradicted by the remainder of the decision. Also HO order requiring AT assessment was inconsistent w findings of fact re student did not need AT. HO order for SD to take reasonable steps to prevent bullying was not supported by the record evidence that showed that SD had taken reasonable corrective actions. **{surprise ending never good}**; IS by Sepiol v Sch Town of Munster 64 IDELR 40 (ND Ind 9/10/14) Court criticized HO decision as **inconsistent** where SD would continue to use a methodology that wasn't working for a second school year after HO had found that it denied FAPE for the same thing in first school year.

2. Scott ex rel CS v NY City Dept of Educ 63 IDELR 43 (SDNY 3/25/14) conclusions **not supported** by record; SRO failed to consider significant evidence; failed to **address** obvious weaknesses and gaps in evidence; **mischaracterized** evidence; and improperly substituted credibility determinations for those of ho who observed testimony; Howard G ex rel Joshua G v State of Hawaii, Dept of Educ 62 IDELR 292 (D Haw 2/24/14) HO decision not supported by the record; Cupertino Union Sch Dist v KA by SA & JS 64 IDELR 200 (ND Calif 12/2/14) Court remanded where HO award of compensatory education was not supported by the record; ho's award was hour-for-hour with no analysis of educational harm; Pointe Educ Services v AT 63 IDELR 279 (D Ariz 8/14/14) Court ruled that HO's findings were **not supported** by the evidence and disagreed with ho's credibility analysis. See, Forest Grove Sch Dist v Student 63 IDELR 163 (D Ore 6/9/14)(ignored contradictory evidence).

3. WW ex rel MC v NY City Dept of Educ 63 IDELR 66 (SDNY 3/31/14) SRO decision **failed to address** two issues (composition of IEPT & whether school too large) therefore court remanded; Rodriguez &

Lopez ex rel CL v Independent Sch Dist of Boise City # 1 63 IDELR 36 (D Idaho 3/28/14) Court declined to defer to ho decision that was **sparse and conclusory** on one issue; MO v Dist of Columbia 62 IDELR 6(DDC 6/30/13) Court remanded case to HO where decision **failed to explain** his reasoning for concluding that LEA considered information provided by parents to IEPT. Conclusory statements were insufficient

4. Marshall Joint Sch Dist No 2 v. CD by Brian & Traci D 616 F.3d 632, 54 IDELR 307 (7th Cir 8/2/10) Seventh Circuit reversed HO who had applied the **wrong** legal **standard** for eligibility (HO determined that disability could affect ed performance not that it did affect performance); See, Forest Grove Sch Dist v Student 63 IDELR 163 (D Ore 6/9/14) Mgst gives little deference where ho findings were not careful (no **discussion** of witness testimony) and little deference to ho conclusions of law where ho failed to support them with **caselaw** and where ho ignored contradictory evidence and where ho imposed an arbitrarily high **legal standard** despite decades of court interpretations of IDEA.

5. Rachel H v Dept of Educ, State of Hawaii 63 IDELR 155 (D Haw 6/18/14) Court gives more deference where ho's findings are thorough and careful; here substantial deference where ho gave **careful consideration** to post hearing briefs and ho participated in **questioning** witnesses and showed strong familiarity with the evidence.

6. SD ex rel HV v Portland Public Schs 64 IDELR 74 (D Maine 9/19/14) Court reversed HO's conclusion that the parent was to blame for IEP implementation failure because of her **demanding, blaming and insistent** attitude. Instead the court found that the **HO overstated** the parent's culpability and held that the denial of FAPE was the result of a badly drafted IEP with improper PLEPs.

7. Sch Union No. 37 v. Mrs C ex rel DB 518 F.3d 31, 49 IDELR 179 (1st Cir 2/26/8) First Circuit upheld the district court conclusion that HO decision lacked **persuasiveness** where it erroneously failed to find a six year delay in bringing a complaint to be unreasonable. Las Virgienes Unified Sch Dist v SK by JK & BK 54 IDELR 289 (CD Calif 6/14/10) HO decision was **not** entitled to deference because it was not careful and thorough. (no references to testimony or exhibits; serious errors re facts , eg time draft IEP was written); KE by KE & TE v. Independent Sch Dist # 15 54 IDELR 215 (D Minn 5/24/10) Court reversed HO where a number of the HO's findings were **not supported**

by evidence in the record; Suggs v. District of Columbia 679 F.Supp.2d 43, 53 IDELR 321 (D DC 1/19/10) Court remanded case to HO where Ho did **not explain his reasoning**; HO cannot simply **disregard evidence**, HO must consider it, evaluate it and explain its impact upon his decision; Fort Osage R-1 Sch Dist v. Sims ex rel BS 55 IDELR 127 (WD Missouri 9/30/10) Court found that HO panel's findings of fact were not **supported by the evidence** and reversed the decision; Marc M ex rel Aidan M v. Dept of Educ, State of Hawaii 762 F.Supp.2d 1235, 56 IDELR 9 (D Haw 1/24/11) Court declined to give deference to HO decision where conclusions were **sparse and cursory** and **not linked to the facts developed at hearing**; SF & YD ex rel GFD v. New York City Dept of Educ 57 IDELR 287 (SDNY 11/9/11) Court found that HO analysis was not entitled to deference where he did **not carefully consider** the evidence (3/4 of a page double spaced in decision), but did give deference to SRO who carefully considered the evidence (nearly 3 single spaced pages); R-RK by CK v. Dept of Educ, State of Hawaii 57 IDELR 70 (D Haw 8/1/11) Court did not give deference to HO decision that was not carefully **reasoned**. SB by Dilip B & Anita B v. Ponoma Unified Sch Dist 50 IDELR 72 (C.D. Calif 4/15/8) HO decision was careful, impartial and sensitive to the complexities of the issues, but the court reversed where it disagreed as to the key conclusions of law. P by Peyman v. Santa-Monica Malibu Unified Sch Dist 50 IDELR 220 (C.D. Calif 7/6/8) Court reversed HO where the decision **ignored crucial** undisputed **testimony** by the parent's expert and where HO's reasons for discounting the expert were **not persuasive**. Cranston Sch Dist v. QD by Mr & Mrs D 51 IDELR 41 (D. RI 9/8/8) The court noted that the HO's decision was flawed by a number of **inconsistencies and mistakes,** most notably misattribution of the sources of evidence for the facts found. Hunter v. District of Columbia 51 IDELR 34 (D. DC 9/17/8) Court remanded a due process hearing to a HO where decision concluded no denial of FAPE without discussing parent's unrebutted testimony that the student regressed under his 2004 IEP, yet 2006 IEP was nearly identical. EM by EM & EM v. Pajaro Valley Unified Sch Dist 51 IDELR 105 (N.D. Calif 10/17/8) HO decisions should be supported by fairly detailed factual findings to permit judicial review. Here court **remanded** the matter back to the HO for further explanation of why he favored one intelligence test over another and **how he**

evaluated all of the mixed test data in concluding that the student was not eligible for special education.

8. DF by AC v. Collingswood Borough Bd of Educ 694 F.3d 488, 59 IDELR 211 (3d Cir 12/12/12) Court reversed HO and lower court criticizing their reliance on an **unpublished court decision**.

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