

# Practical and Legal Lessons Learned from Early Resolution Meetings

Judy Harvey, Resolution Specialist

Kathleen Sullivan, Esq., Senior Advisor,  
Special Needs Programs and Litigation

Cobb County School District, Marietta, GA

# Statutory Provision

20 U.S.C. § 1415(f)(B) Resolution session

Prior to the opportunity for an impartial due process hearing, the LEA shall convene a meeting with the parents and the relevant member of members of the IEP team who have specific knowledge of the facts identified in the complaint –

- (I) within 15 days of receiving notice of the parents' complaint;
- (II) which shall include a representative of the agency who has decisionmaking authority on behalf of such agency;
- (III) which may not include an attorney of the local educational agency unless the parent is accompanied by an attorney; and
- (IV) where the parents of the child discuss their complaint, and the facts that form the basis of the complaint, and the local educational agency is provided the opportunity to resolve the complaint, unless the parents and the local educational agency agree in writing to waive such meeting, or agree to use the mediation process described in subsection (e).



# Purpose of the Meeting

The purpose of the meeting is for the parent of the child to discuss the due process complaint, and the facts that form the basis of the due process complaint, so that the LEA has the opportunity to resolve the dispute that is the basis for the due process complaint.

34 C.F.R. § 300.510(a)(2).

# Timing

- The LEA must convene a resolution meeting within 15 days of receiving notice of the parent's due process complaint. 20 U.S.C. § 1415(f)(1)(B)

Practical Point: The LEA needs to set the date for the resolution meeting upon receipt of the complaint.

- The parties may agree to an extension of the time for a resolution meeting.

Practical Point: An agreement to extend the timeline should be made in writing. Rather than requesting that the parent enter a written agreement, the LEA can send written confirmation of an oral agreement.

# Timing

## (Sufficiency Concerns)

- The resolution meeting should not be postponed when the LEA believes that a parent's complaint is insufficient.  
S. Rpt. No. 108–185, p. 38.
- The timeline begins again when a due process complaint is amended (which can only be done by agreement). 34  
C.F.R. § 300.508(d)(4).

**Practical Point:** The LEA must simultaneously challenge the sufficiency of the complaint and pursue the resolution meeting. If the complaint is found insufficient, then an additional resolution session could be held.

# Timing

## (Expedited Due Process Hearings)

- For expedited due process hearings, the resolution meeting must occur within seven days of receiving notice of the parent's due process complaint.
- Unless the matter is resolved within 15 days of the receipt of the parent's due process complaint requesting the expedited due process hearing, all the applicable timelines for an expedited due process hearing commence.
- The parties may agree to waive the resolution meeting or agree to use the mediation process.
- 34 C.F.R. § 300.532(c)(3).

# Participants

- Must include:
  - the parent
  - the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the due process complaint that—
    - (i) Includes a representative of the public agency who has decision-making authority on behalf of that agency; and
- May include:
  - persons that the parents may choose to bring, including an advocate or family friend

# Participants (continued)

- May not include:
  - an attorney of the LEA unless the parent brings an attorney
  - a court-appointed advocate attending in place of a parent, unless the person has been properly appointed as a surrogate parent or the person is acting in the place of the biological or adoptive parent of the child in accordance with § 300.30(a)(4).
- Should not include:
  - Anyone to whom the other side objects, BUT the inviting party determines the appropriateness of its invitees
- Should include:
  - A trained LEA facilitator who has received settlement authority

**Practical Point: Give and ask for early notice**



# Role of the School District Team

- Listen to the Parent
- Demonstrate Understanding
- Clarify Necessary Issues Relevant to FAPE
- Try to Diminish Minor Factual Disputes
- Show Genuine Concern for the Student

# Preparatory Activities (PA)

Before convening a resolution meeting, an LEA should:

- Collect and review the student's records
- Meet with the relevant educators and discuss the merits of the parents' allegations and ideas for resolution
- Determine the participants for the RM
- Schedule the RM and send written confirmation
- Secure settlement authority

# Procedures During the Resolution Session

The U.S. DOE has said:

We do not believe that it is necessary or appropriate to regulate on the specific structure or protocol for resolution meetings as doing so could interfere with the LEA and the parent in their efforts to resolve the complaint in the resolution meeting.

CCSD's Procedures:

- Discuss process, introduce participants
- Determine confidentiality
- Explain agreement form
- Ask Family to present issues
- Ask school representatives to respond
- Participate in discussion leading to agreement (Hopefully)
- Draft and execute agreement

# Confidentiality

Both the statute and the regulations are silent regarding the confidentiality of resolution meetings.

The U.S. DOE made clear that the parties may enter a confidentiality agreement, but may not condition participation on such an agreement.

Practical point: Make clear at the opening of the resolution meeting how the parties are going to treat the process.

# Waiver

A resolution meeting need not occur:

- (1) when the parent and LEA agree in writing to waive the meeting; and
  - (2) when the parent and LEA agree to use the mediation process in § 300.506.
- 34 C.F.R. § 300.510(a)(3).

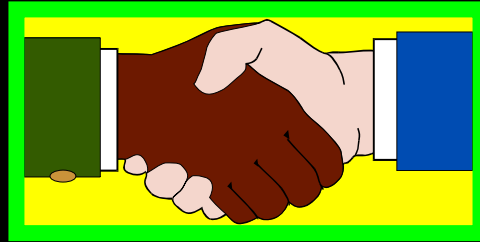
The resolution meeting is a “required vehicle”, thus there are no provisions for unilateral waiver by either party.

Practical Point: DOE declined to specify as to how the waiver should be made. Until SEAs establish procedures, it would be permissible to indicate on the DPH complaint form.

# Consequences of Failure to Participate

- If the parent fails to attend a resolution meeting properly noticed and convened by the LEA, then the U.S. DOE has indicated the LEA should continue to work to obtain (and document its efforts akin to IEP meetings) the participation of the parent for the entire 30-day resolution period. At the conclusion of the 30-day period, the LEA may ask the hearing officer dismiss the parent's due process complaint. 34 C.F.R. §300.510(b)(4).
- If the LEA fails to convene a resolution meeting within 15 days, the parent may seek the intervention of a hearing officer to begin the due process hearing. 34 C.F.R. §300.510(b)(5).

# After the Resolution Meeting



- If Agreement is reached:
  - Either party has the right to void the resolution agreement within three business days of execution.  
Practical Point: This right must be described in the procedural safeguards,  
but the U.S. DOE recognizes that it is not the LEA's responsibility to provide  
notice of this right orally.
  - Inform all stakeholders of resolution and their responsibilities, if any.
  - Secure and communicate withdrawal of the due process complaint to the hearing officer

# Enforcement

A written settlement agreement entered at the resolution meeting is enforceable in any State court of competent jurisdiction or in a district court of the United States, or, by the SEA, if the State has other mechanisms or procedures that permit parties to seek enforcement of resolution agreements. 20 U.S.C. 1415(e)(2)(F), 1415(f)(1)(B), 34 C.F.R. § 300.537.

**Practical Point:** This regulation now provides the written assurance that many families sought but could not get regarding the enforceability of mediation agreements.



# After the Resolution Session



- If No Agreement is reached:
  - Consider convening an IEP meeting to incorporate any useful, relevant ideas into the child's IEP
  - Offer mediation
  - Consider sending an offer of settlement letter consistent with 10 day requirements
  - Prepare for hearing

# Results To Date

CCSD has convened 23 Resolution Meetings  
resulting in:

- 10 Complete Agreements
- 1 Partial Agreement
- 12 No Agreement
- 1 Rescinded by Parent
- 0 Rescinded by District



# Ultimate Outcomes

Of the matters not resolved in the RMs:

- 4 settled in mediation
- 1 was settled via an offer letter sent by the District
- 4 parents withdrew the hearing request
- 2 proceeded to hearing
- 1 was dismissed with prejudice