



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

April 23, 2012

Michael J. Eig
Michael J. Eig and Associates, P.C.
Attorneys at Law
Suite 760
5454 Wisconsin Avenue
Chevy Chase, Maryland 20815-6938

Dear Mr. Eig:

This is in response to your October 28, 2011 letter to Dr. Gregory R. Corr, Director of the Monitoring and State Improvement Planning Division for the Office of Special Education Programs (OSEP) in the U.S. Department of Education (Department), regarding how the District of Columbia Public Schools (DCPS) conducts resolution meetings. You have indicated that you represent a parent who has filed a due process complaint including allegations that DCPS violated the requirements of Part B of the Individuals with Disabilities Education Act (IDEA) during the resolution process. While it is not generally OSEP's practice to comment on matters that are the subject of a due process hearing, we are pleased to address the underlying regulatory requirements. By copy of this correspondence, we are notifying Amy Maisterra, Assistant Superintendent of Special Education of the District of Columbia Office of the State Superintendent of Education, regarding your concerns.

Pursuant to 34 CFR §300.510, the local educational agency (LEA) must convene a meeting, within 15 days of receiving notice of the parent's due process complaint, and prior to the initiation of a due process hearing under 34 CFR §300.511, with the parent and the relevant member or members of the individualized education program (IEP) Team who have specific knowledge of the facts identified in the due process complaint. The membership must include a representative of the public agency who has decision-making authority on behalf of that agency and may not include an attorney of the LEA unless the parent is accompanied by an attorney. Additionally, 34 CFR §300.510(a)(4) states that "the parent and the LEA determine the relevant members of the IEP Team to attend the meeting."

With regard to parent participation, 34 CFR §300.510(b)(4) states that, if the LEA is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made (and documented using the procedures in 34 CFR §300.322(d)), the LEA may, at the conclusion of the 30-day period, request that a hearing officer dismiss the parent's due process complaint. The procedures used to document the LEA's attempts to obtain parent participation, pursuant to 34 CFR §300.322(d), include that the public agency must keep a record of its attempts to arrange a mutually agreed on time and place, such as: (1) detailed records of

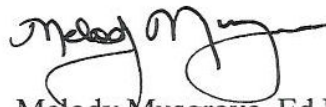
telephone calls made or attempted and the results of those calls; (2) copies of correspondence sent to the parents and any responses received; and (3) detailed records of visits made to the parent's home or place of employment and the results of those visits.

The regulation at 34 CFR §300.510(b)(4) specifically refers to 34 CFR §300.322(d) and does not reference the citation at 34 CFR §300.322(c) that “the public agency must use other methods to ensure parent participation, including individual or conference telephone calls.” While the regulation at 34 CFR §300.510 does not include a requirement that public agencies use other methods to ensure parent participation in a resolution meeting, the Department has stated that if the LEA notifies the parent of its intent to schedule a resolution meeting within 15 days of receiving notice of the parent's due process complaint, and the parent informs the LEA in advance of the meeting that circumstances prevent the parent from attending the meeting in person, it would be appropriate for the LEA to offer to use alternative means to ensure parent participation, such as video conferences or conference telephone calls, subject to the parent's agreement. (See Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities, Final Rule, Analysis of Comments and Changes, 71 Fed. Reg. 46540, 46701 (August 14, 2006)).

Based on section 607(e) of the IDEA, we are informing you that our response is provided as informal guidance and is not legally binding, but represents an interpretation by the U.S. Department of Education of the IDEA in the context of the specific facts presented.

If you have additional questions, please do not hesitate to contact Dr. Deborah J. Morrow at 202-245-7456 or by email at Deborah.Morrow@ed.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Melody Musgrove".

Melody Musgrove, Ed.D.

Director
Office of Special Education Programs

cc: Amy Maisterra, Ed.D., MSW
Assistant Superintendent of Special Education
Office of the State Superintendent of Education