



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

August 8, 2012

Paula Walker, Ph.D.
Executive Director of Special Education
Lewisville Independent School District
136 Purnell Street
Lewisville, Texas 75057

Dear Dr. Walker:

This is in response to your February 10, 2011 letter regarding resolution meetings required under 34 CFR §300.510. I apologize for the delay in our response and understand that Dr. Deborah Morrow, of my staff, communicated with your staff regarding the delay and verified that you continue to want a response from the Office of Special Education Programs (OSEP).

In your letter, you ask whether it is appropriate for a parent to participate by telephone in the resolution meeting required pursuant to 34 CFR §300.510. You express concern that a lack of participation by both the parents and school district personnel in person will reduce the effectiveness of the resolution meeting and limit opportunities for resolution of disputes at the school level. Specifically, you ask: (1) is the interpretation of the regulations correct that parents will attend the resolution meeting in person, unless both parties agree to another means of participation; (2) if the parties cannot meet for the resolution meeting within the initial 15 calendar days, can the time be extended; and (3) if the parents do not agree to participate in person, is the district then entitled to request a dismissal of the hearing?

Under 34 CFR §300.510, 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, the local educational agency (LEA) must convene a meeting 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 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 CFR §300.510(a)(1) and (2). The regulations provide that, if the LEA has not resolved the due process complaint to the satisfaction of the parent within 30 days of the receipt of the due process complaint, the due process hearing may occur. 34 CFR §300.510(b)(1). Additionally, if the LEA fails to hold the resolution meeting within 15 days of receiving notice of a parent's due process complaint or fails to participate in the resolution meeting, the parent may seek the intervention of a hearing officer to begin the due process hearing timeline. 34 CFR §300.510(b)(5).

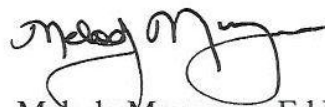
While a face-to-face meeting may be preferable and we understand the concerns about a telephone conference in lieu of a face-to-face meeting, nothing in the regulation specifically requires that the parent attend in person. As you point out, the regulation at 34 CFR §300.322(c) specifically requires the use of other methods such as telephone conferences to ensure parental participation in IEP meetings. However, the fact that the regulation requires other methods for IEP meetings and is silent on resolution meetings should not be read as a limitation on the use of other methods for resolution meetings. Moreover, the same policy reasons that support the use of other methods such as telephone conferences for IEP meetings support their use for resolution meetings. For example, some parents may not have sufficient flexibility in their work schedules or may have significant responsibilities caring for other dependents and are therefore limited in their ability to participate in a resolution meeting in person. There also may be exceptional circumstances that limit the parent's ability to participate in person such as hospitalization or military service. See 71 Fed. Reg. 46540, 46701 (August 14, 2006).

Under 34 CFR §300.510(b)(4), if the LEA is unable to obtain the participation of the parent in the resolution meeting after reasonable attempts have been made, the LEA may, at the conclusion of the 30-day period, request that a hearing officer dismiss the parent's due process complaint. Because participation in a resolution meeting is a prerequisite to proceeding with the due process hearing, it may be inequitable to treat a parent who requests to participate by telephone the same as a parent who is unwilling to participate at all. Because a hearing officer has broad discretion in determining the factors that are relevant to a request to dismiss a due process complaint, it would be appropriate for the hearing officer to consider the reasons for parent's request to participate in the resolution meeting by telephone. That is, a hearing officer may properly determine that a parent's request to participate by phone does not constitute a failure on the part of the parent to participate in the resolution meeting and therefore refuse to dismiss the parent's complaint. Conversely, a hearing officer may determine that it is inappropriate for the LEA to require that the parent participate in a resolution meeting only by telephone.

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. Marion Crayton, at 202-245-6474 or by email at Marion.Crayton@ed.gov.

Sincerely,



Melody Musgrove, Ed.D.

Director

Office of Special Education Programs

cc: State Director of Special Education