

Dispute Resolution Monitoring of the New Jersey Department of Education

Under Part B of the Individuals with Disabilities Education Act (IDEA or Part B), the State must have reasonably designed dispute resolution procedures and practices if it is to effectively implement: (1) the State complaint procedure requirements in 34 C.F.R. §§300.151 through 300.153, and 20 U.S.C. 1221e-3; (2) the mediation requirements in 20 U.S.C. §1415(e) and 34 C.F.R. §300.506; and (3) the due process complaint and impartial due process hearing and expedited due process hearing requirements in 20 U.S.C. §1415(b)(6) – (8), (c)(2), 1415(f) – (i), (k)(3) and (4), and (o) and 34 C.F.R. §§300.500, 300.507 through 300.518 and 300.532. The Office of Special Education Programs (OSEP) conducted on-site monitoring of the New Jersey Department of Education’s (NJDOE) dispute resolution system on September 20 and 21, 2018. OSEP conducted interviews of NJDOE staff and reviewed documentation related to the State’s dispute resolution system, specifically NJDOE’s Due Process complaint and Hearing Procedures. This report does not address NJDOE’s mediation or Part B State complaint procedures or the State’s implementation of those procedures, and OSEP expresses no view as to whether the State’s procedures for those dispute resolution mechanisms comply with applicable Part B requirements.

New Jersey’s Due Process Hearing Procedures

New Jersey operates a one-tier due process hearing system, under which the State educational agency is responsible for conducting the hearing. New Jersey’s Office of Administrative Law (OAL) conducts IDEA due process hearings for NJDOE, and Administrative Law Judges (ALJs) from OAL serve as impartial hearing officers. It is not inconsistent with IDEA for a State that operates a one-tier due process system, as New Jersey has chosen to do, to use its administrative law system to administer due process hearings under IDEA as long as all applicable IDEA requirements are met.¹

I. Timely Due Process Hearing Decisions

Under 34 C.F.R. §300.515(a), not later than 45-days after the expiration of the 30-day resolution period under §300.510(b), or the adjusted time periods described in §300.510(c), a final decision is reached in the hearing, and a copy of the decision is mailed to each of the parties. Under 34 C.F.R. §300.11(a), a day means calendar day unless otherwise indicated as a business day or school day. Further, under 34 C.F.R. §300.515(c), a hearing officer may grant specific extensions of time beyond the period set out in paragraph (a) at the request of either party.²

Prior to the on-site visit, OSEP received two complaints related to the way the State calculates the 45-day timeline with respect to issuing a final hearing decision. One complaint alleged that the State counts “Federal days” instead of calendar days in calculating the 45-day timeline.

¹ See OSEP Letter to Greer (September 12, 2002) available at: <https://sites.ed.gov/idea/idea-files/policy-letter-september-12-2002-to-louisiana-assistant-legislative-auditor-david-k-greer/>.

² See Question C-22 in Questions and Answers on IDEA Part B Dispute Resolution Procedures (Revised July 2013) [hereinafter referred to as OSEP’s Dispute Resolution Q’s & A’s] available at: <https://www2.ed.gov/policy/speced/guid/idea/memosdcrltrs/acccombinedosersdisputeresolutionqafinalmemo-7-23-13.pdf>.

According to the complaint, ALJs only count days as “Federal days” against the 45-day timeline when an action took place with regards to the hearing. As an example: once a due process hearing request is transferred to the State’s OAL, a settlement conference is held; Second, within days to weeks, a prehearing conference is held with the ALJ and both parties to schedule hearing dates. Third, within days to weeks, a hearing is held. These three actions are considered as three (3) “Federal days” and are counted against the 45-day timeline, but the days and weeks between each action are not counted when calculating the 45-day timeline.

During the on-site visit, OSEP discussed this practice with NJDOE officials who also confirmed that ALJs who serve as hearing officers use “Federal days,” rather than calendar days in calculating the 45-day timeline. The State was unable to provide its definition of “Federal day” or method for calculating the 45-day timeline and acknowledged that it does not have a mechanism for ensuring that ALJs who serve as hearing officers are reaching hearing decisions and mailing a copy of the decision to the parties within the 45-day timeline. Proper calculation of the due process hearing decision timeline using calendar days is essential to ensuring the timely resolution of due process complaints filed by parents and school districts on matters relating to the identification, evaluation, educational placement of a child with a disability, or the provision of a free appropriate public education to the child.

Regarding extensions of the 45-day timeline, NJDOE explained to OSEP that when an ALJ grants an extension to the 45-day timeline, an adjournment is granted pursuant to NJAC 1:6A-9.2. While this State provision, on its face, is consistent with 34 C.F.R. §300.515(c), NJDOE staff acknowledged that they have no mechanism to ensure that adjournments are granted at the request of a party and that the ALJ specifies either the length of the adjournment or the date by which the decision will be mailed to the parties.

OSEP Conclusion

Based on the review of documents and interviews with State personnel, OSEP determined that the State does not have procedures for ensuring that decisions in due process hearings are issued within the 45-day timeline or within allowable extensions, because: (i) the State does not have procedures for ensuring that ALJs who serve as hearing officers use calendar days, consistent with the definition of day in 34 C.F.R. §300.11(a), in calculating the 45-day timeline in 34 C.F.R. §300.515(a) for reaching a final decision in a due process hearing and mailing the decision to each of the parties; and (ii) the State does not have procedures for ensuring that ALJs who serve as hearing officers grant adjournments, as set forth in N.J.A.C. 1:6A-9.2, consistent with the provision for granting extensions of the 45-day timeline in 34 C.F.R. §300.515(c) for a specific period of time and at the request of a party. Consequently, NJDOE has failed to exercise its general supervisory and monitoring responsibility in 20 U.S.C. §§1412(a)(11) and 1416(a) and 34 C.F.R. §§300.149 and 300.600 and 20 U.S.C. §1232d(b)(3)(A) to ensure that due process hearing decisions are issued within the 45-day timeline or within an allowable extension, as required by 34 C.F.R. §300.515(a) and (c). Because the State does not have procedures for ensuring that hearing decisions reached within the 45-day timeline or an allowable extension is properly calculated, the State cannot ensure that its IDEA section 618 Dispute Resolution Data submission on fully adjudicated hearings completed within timeline and within extended timelines is accurate.

Required Actions/Next Steps

Within 90 days of the date of this letter, the State must provide:

- 1) Documentation demonstrating that the State has established procedures to ensure that ALJs who serve as hearing officers calculate the 45-day timeline for issuing final decisions in due process hearings based on calendar days rather than Federal days.
- 2) Documentation demonstrating that the State has established procedures to ensure that ALJs who serve as hearing officers grant adjournments, as set forth in N.J.A.C. 1:6A-9.2, only at the request of a party to the hearing and for a specific period of time.
- 3) A copy of the notification to be issued to all ALJs who serve as hearing officers, LEAs, parent advocacy groups and other interested parties advising them that the State has revised its due process hearing timeline procedures to be consistent with the Part B regulations at 34 C.F.R. §300.515(a) and (c), as described above.
- 4) Documentation demonstrating that the State has reviewed its due process hearing data collection process and revised it, as necessary, to ensure that, consistent with the information set forth above, it will be able to provide accurate data on fully adjudicated hearings and hearing decisions with allowable extensions for the IDEA section 618 dispute resolution data submission for the School Year 2019-2020 data collection (reporting year is defined as July 1, 2019 through June 30, 2020).

II. Resolution Meetings

Under 20 U.S.C. §1415(f)(1)(B) and 34 C.F.R. §300.510(a), the local educational agency (LEA) must convene a resolution 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 §300.511. Under 34 C.F.R. §300.510(a)(3), the resolution meeting need not be held if the parent and the LEA agree in writing to waive the meeting; or the parties agree to use the mediation process described in 34 C.F.R. §300.506. Under 34 C.F.R. §300.510(b)(1)-(2), 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. The timeline for issuing a final hearing decision under §300.515 begins at the expiration of the 30-day resolution period or the adjusted resolution period. During the on-site visit, the State informed OSEP that it has no systematic way to monitor whether the LEA has convened a resolution meeting within 15 days of receiving notice of the parent's due process complaint, unless the resolution meeting need not occur consistent with 34 C.F.R. §300.510(b), and has no tracking mechanism for determining whether the LEA convened a resolution meeting within 15 days of receiving notice of the parent's due process complaint.³ Further, NJDOE staff informed OSEP that the way they know that the LEA convened a resolution meeting within 15 days of receiving notice of the parent's due process complaint is when a written settlement agreement is reached through the resolution meeting by the conclusion of the 30-day resolution period. NJDOE also acknowledged that because they do not have a mechanism for tracking when a resolution meeting occurs, they cannot determine

³ OSEP made a similar finding as a result of its 2011 verification visit to NJDOE. See also OSEP Letter to Worthington, March 17, 2008 available at: <https://sites.ed.gov/idea/idea-files/osep-letter-march-17-2008-to-new-jersey-office-of-the-state-board-of-appeals-acting-director-john-worthington/>.

whether the 45-day due process hearing timeline commences at the conclusion of the 30-day resolution period or the adjusted resolution period.

OSEP Conclusion

Based on the review of documents and interviews with State personnel, OSEP determined that the State does not have procedures to ensure that the LEA convenes a resolution meeting within 15 days of receiving notice of the parent's due process complaint, unless the parties agree in writing to waive the meeting or to use mediation, in accordance with 34 C.F.R. §300.510(a) and (b).

The State does not have a tracking mechanism for determining when the resolution period has concluded and the 45-day hearing timeline in 34 C.F.R. §300.515(a) commences if the resolution process is unsuccessful in resolving the parent's due process complaint. Consequently, the State is not exercising its general supervisory and monitoring responsibility in accordance with 20 U.S.C. §§1412(a)(11) and 1416(a) and 34 C.F.R. §§300.149 and 300.600(a), (d)(2), and (e) and 20 U.S.C. §1232d(b)(3)(A) and (E) to ensure that: (i) LEAs hold a resolution meeting within 15 days of receiving notice of the parent's due process complaint, as required by 34 C.F.R. §300.510(a); (ii) the 45-day due process hearing commences at the conclusion of the 30-day resolution period or the adjusted resolution period; and (iii) if an LEA fails to comply with the requirement to convene a resolution meeting, the State makes a finding of noncompliance and ensures correction of the noncompliance as soon as possible and in no case later than one year from the State's identification of the noncompliance, as required by 34 C.F.R. §300.600(e).

Required Actions/Next Steps

Within 90 days of the date of this letter, the State must provide documentation demonstrating that it has revised its dispute resolution procedures and practices to ensure that: (i) the State has a mechanism for tracking whether an LEA convenes a resolution meeting within 15 days of receiving notice of the parent's due process complaint, unless the parties agree in writing to waive the meeting or to use mediation; and (ii) if an LEA fails to convene a resolution meeting as required, the State makes a finding of noncompliance and ensures that the LEA's noncompliance is corrected as soon as possible, and in no case later than one year of the State's identification of the noncompliance.

III. Child's Status during Proceedings

Under 20 U.S.C. §1415(j) and 34 C.F.R. §300.518, except as provided in 34 C.F.R. §300.533, during the pendency of any administrative or judicial proceeding regarding a due process complaint notice requesting a due process hearing under §300.507, unless the State or local agency and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her current educational placement. This provision is commonly referred to as "pendency" or "stay-put."

N.J.A.C. 6A:14-2.7(u) states:

Pending the outcome of a due process hearing, including an expedited due process hearing, or any administrative or judicial proceeding, no change shall be made to the student's classification, program or placement unless both parties agree, or emergency

relief as part of a request for a due process hearing is granted by the Office of Administrative Law according to (m) above or as provided in 20 U.S.C. § 1415(k)(4) as amended and supplemented. (See chapter Appendix A.)

Although the above-referenced provision of New Jersey law places no limitation on the application of IDEA's pendency or stay-put provision to due process complaints filed after 15 calendar days of the proposed change in the child's program or placement, New Jersey's Special Education Dispute Resolution Procedures Manual states:

requests filed within 15 calendar days of a proposed change to a student's program or placement generally receive the "stay-put" protections, meaning that no change to the student's program or placement can occur until a written decision on the matter is issued by an ALJ. Requests filed after 15 calendar days of being informed of the proposed change are still valid; however are not subject to the stay-put protections. Ultimately, the issue of a student's "stay-put" placement is determined by an ALJ.

A similar explanation is provided in New Jersey's Parental Rights in Special Education Handbook, pages 20 and 21, which also indicates that a parent who disagrees with their child's placement pending the outcome of a due process hearing may request emergent relief.⁴

While neither IDEA nor its implementing regulations define the term "current educational placement," IDEA does not limit the application of the stay-put provision to a due process complaint requesting a due process hearing that is filed within 15 calendar days of a proposed change in a child's program or placement.

In general, the IDEA presumes that the child's current educational placement is the last agreed-upon placement where the child must remain until the completion of administrative and judicial proceedings, unless the public agency and the parents agree to some other placement. However, if a parent files a due process complaint requesting a due process hearing and if one or more of the issues in that complaint directly affects a determination of the child's current educational placement for purposes of "stay-put" or "pendency", it is appropriate for a hearing officer to make an initial determination in order to ensure that the child's current educational placement is maintained pending the final hearing decision. Where the child's current educational placement

⁴ The New Jersey Administrative Code permits a party to a due process complaint or hearing or an expedited due process hearing to request a temporary order for emergent relief. According to the rule, "either party may apply in writing for a temporary order of emergent relief as part of a request for a due process hearing or an expedited hearing for disciplinary action or at any time after a due process or expedited hearing is requested pending a settlement or decision on the matter." N.J.A.C. 6A:14-2.7(r). Compare New Jersey's explanation with the information about 34 C.F.R. §300.518 provided in OSEP's Model Form Part B Procedural Safeguards Notice (revised June 2009) available at: https://sites.ed.gov/idea/files/modelform_Procedural_Safeguards_June_2009.pdf. OSEP's model notice reads in part: 34 CFR §300.518

Except as provided below under the heading PROCEDURES WHEN DISCIPLINING CHILDREN WITH DISABILITIES, once a due process complaint is sent to the other party, during the resolution process time period, and while waiting for the decision of any impartial due process hearing or court proceeding, unless you and the State or school district agree otherwise, your child must remain in his or her current educational placement.

is not in dispute, the stay-put provision applies automatically, and it is not necessary for the school district to require a decision by a hearing officer.⁵

OSEP Conclusion

Based on the review of documents and interviews with State personnel, OSEP determined that the State procedures for implementing the requirement to maintain the child's current educational placement during the pendency of proceedings, set forth in New Jersey's Special Education Dispute Resolution Procedures Manual and the explanation on pages 20 and 21 of its Parental Rights in Special Education Handbook, are inconsistent with 20 U.S.C. §1415(j) and 34 C.F.R. §300.518, because those procedures limit the application of the pendency or stay-put provision to due process complaints under 34 C.F.R. §300.507 filed within 15 calendar days of the proposed change in the child's program or placement.

Required Actions/Next Steps

Within 90 days of the date of this letter, the State must provide:

- 1) Documentation demonstrating that the State has revised the procedures in New Jersey's Special Education Dispute Resolution Procedures Manual and the explanation on pages 20 and 21 of its Parental Rights in Special Education Handbook by removing the language limiting the application of the pendency or stay-put provision to due process complaints filed within 15 calendar days of the proposed change in the child's program or placement and including the explanation of the stay-put or pendency provision described above.
- 2) A copy of the notification to be issued to all ALJs who serve as hearing officers, LEAs, parent advocacy groups and other interested parties advising them that the State has revised its stay-put or pendency procedures to be consistent with 20 U.S.C. §1415(j) and 34 C.F.R. §300.518, as described above.

IV. Expedited Due Process Hearings

Under 20 U.S.C. §1415(k)(3) and 34 C.F.R. §300.532(a), the parent of a child with a disability who disagrees with any decision regarding placement under §§300.530 and 300.531, or the manifestation determination under §300.530(e), or an LEA that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, may appeal the decision by requesting a hearing. The hearing is requested by filing a complaint pursuant to §§300.507 and 300.508(a) and (b). Under 34 C.F.R. §300.532(c)(1), whenever a hearing is requested under §300.532(a), the parents or the LEA involved in the dispute must have an opportunity for an impartial due process hearing consistent with the requirements of §§300.507, 300.508(a) through (c), and §§300.510 through 300.514, except as provided in §300.532(c)(2) through (4). Under 34 C.F.R. §300.532(c)(2), the SEA or LEA is responsible for arranging the expedited due process hearing, which must occur within 20 school days of the date the due process complaint requesting the hearing is filed. The hearing officer must make a

⁵ See OSEP letter to Goldstein, October 18, 2012, available at: <https://sites.ed.gov/idea/idea-files/policy-letter-october-18-2012-to-steven-l-goldstein-esq/>.

determination within 10 school days after the hearing. Under 34 C.F.R. §300.532(c)(3), a resolution meeting must occur within seven days of receiving notice of the due process complaint, unless the parties agree in writing to waive the meeting or to use mediation. Under 34 C.F.R. §300.532(c)(4), a State may establish different procedural rules for expedited due process hearings than it has established for other due process hearings, but except for the timelines as modified in 34 C.F.R. §300.532(c)(3) (governing the resolution process), the State must ensure that the requirements in §§300.510 through 300.514 are met.

OSEP identified two concerns with NJDOE's procedures governing expedited due process hearings. Appendix 11 (Summary of Mediation and Due Process Requirements) within NJDOE's Special Education Dispute Resolution Manual, states that sufficiency challenges can be made in expedited due process hearing requests within 15 days of receipt of an expedited due process hearing, even though the sufficiency provision in 34 C.F.R. §300.508(d) does not apply to expedited due process complaints.⁶ Further, OSEP understands, after interviews with NJDOE staff, that the State permits adjournments, as defined under N.J.A.C. 1:6A-9.2, to expedited due process hearings at the request of a party, even though there is no provision permitting a hearing officer to grant extensions of the timelines for expedited due process hearings at the request of a party to the hearing.⁷

OSEP Conclusions

Based on the review of documents and interviews with State personnel, OSEP determined that the State does not have procedures for ensuring that ALJs who serve as hearing officers issue decisions in expedited due process hearings in accordance with 34 C.F.R. §300.532(c)(2) because: (i) the State permits ALJs who serve as hearing officers to grant a request from a party to an expedited due process hearing to challenge the sufficiency of the due process complaint, a practice that is inconsistent with 34 C.F.R. §300.532(a); and (ii) the State permits ALJs who serve as hearing officers to grant an adjournment of the expedited due process hearing timelines in 34 C.F.R. §300.532(c)(2), even though there is no provision permitting a hearing officer to grant extensions of these timelines. Because of the absence of procedures described above, the State cannot ensure that its section 618 dispute resolution data submission on the number of expedited due process hearing decisions decided within the timeline is accurate.

Required Actions/Next Steps

Within 90 days of the date of this letter, the State must provide:

- 1) Documentation demonstrating that the State has revised its procedures for expedited due process hearings to ensure that: (i) ALJs who serve as hearing officers do not permit parties to challenge the sufficiency of an expedited due process complaint; and (ii) ALJs who serve as hearing officers will no longer grant "adjournments" which are inconsistent with the shortened timelines governing expedited due process complaints.
- 2) A copy of the notification to be issued to all ALJs who serve as hearing officers, LEAs, parent advocacy groups and other interested parties advising them that the State has revised the expedited due process hearing procedures found in NJDOE's Special

⁶ See Question E-6 of OSEP's Dispute Resolution Q's and A's.

⁷ See Question E-7 of OSEP's Dispute Resolution Q's and A's.

Education Dispute Resolution Manual to be consistent with the Part B regulations at 34 C.F.R. §300.532, as described above.

- 3) Documentation demonstrating that the State has reviewed its expedited due process hearing data collection process and has revised it, as necessary, to ensure that it will be able to provide accurate data for its IDEA section 618 dispute resolution data submission for the School Year 2019-2020 data collection (reporting year is defined as July 1, 2019 through June 30, 2020).