



VIA EMAIL

June 26, 2009

Dr. Kerri Briggs
State Superintendent of Education
441 4th Street, NW, Suite 350 North
Washington, DC 20001
Attn: Adam Thibault

Re: Comments on Proposed Chapter 30, Section 30 of Title V of the District of Columbia Municipal Regulations

Dear Dr. Briggs:

I am submitting these comments on behalf of the Children's Law Center¹ (CLC), which represents more than 1,000 low-income children and families in the District of Columbia every year, including a significant number of children and families with various special education needs. CLC's comments on OSSE's proposed regulations regarding special education resolution meetings and due process hearing timelines are based on our experience in special education cases, both those that reach a due process hearing and those resolved prior to a hearing.

We recognize OSSE's dual goals of developing a dispute resolution system that quickly resolves many special education cases before reaching a due process hearing while ensuring that when due process hearings are necessary they are held and decisions are reached following federally mandated timelines. We offer the below comments in hopes of improving the proposed regulations so that they can better assist OSSE's efforts towards these goals.

1) The regulations should clarify when the absence of a resolution meeting can delay a due process hearing or justify a request for a hearing officer to dismiss a parent's complaint.

The proposed regulations largely track federal regulations on resolution meetings. *See* 34 C.F.R. § 300.510. The federal regulations are broad and allow the states to provide the detail necessary for clear administration. The proposed regulations, however, do not include any

¹ The Children's Law Center, with over seventy staff members, is the largest civil legal services organization in the District of Columbia and the only organization providing comprehensive representation to children. The Children's Law Center envisions a future for the District of Columbia in which every child has a safe home, a meaningful education and a healthy mind and body. We work toward this vision by providing free legal services to 1,000 children and families each year and by using the knowledge we gain from representing our clients to advocate for changes in the law.



provisions that will assist in District-specific reform efforts, and thus risk creating unnecessary litigation.

There are common problems that occur in our cases that make clearer guidance necessary. In our experience, schools often call parents to inform them of a resolution meeting on very short notice – often twenty-four hours or less. Schools also often fail to work with parents to identify the relevant IEP Team members who should attend, as required by § 3030.2 and 34 C.F.R. § 300.510(a)(4). Many resolution meetings fail to occur within the required 15-day timeframe due to inadequate notice or similar mistakes by local education agencies (LEAs). In such situations, it is inappropriate for parents to lose their rights to a due process hearing within 45 days, and even more inappropriate for parents' complaints to be dismissed. Without clarification, however, proposed §§ 3030.5 and 3030.6 could lead to precisely that result.

We urge OSSE to revise proposed §§ 3030.1, 3030.5 and 3030.6 to more clearly require the LEA to make sufficient efforts to arrange resolution meetings and to provide that insufficient efforts by a LEA to schedule resolution meetings cannot lead to negative consequences for the parents. Our specific suggestions for revision are below.

Proposed § 3030.1 requires the LEA to “convene a resolution meeting with the parent,” but provides no guidance as to how the LEA should set a meeting to enable parental participation. This omission stands in contrast with the existing regulations regarding Individualized Education Program meetings, which require LEAs to schedule a meeting “at a mutually agreed upon time and place.” 5 D.C.M.R. § 3003.6(c)(1). *See* proposed §§ 3030.5 and 3030.6. In addition, other states have enacted regulations with similar guidance for LEAs when scheduling a resolution meeting. *See, e.g.* 8 N.Y. Comp. Codes R. & Regs. § 200.5(j)(2)(i). We urge OSSE to revise § 3030.1 to include the requirements of § 3003.6:

→ Change § 3030.1 to read: 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, the ~~public~~ **local**² education agency (~~“agency”~~² **“LEA”**³) shall convene a resolution meeting with the parent and the relevant member(s) of the IEP Team who have specific knowledge of the facts identified in the due process complaint. **The LEA shall notify the parent early enough to ensure that he or she will have an opportunity to attend the meeting and shall schedule the resolution meeting at a mutually agreed upon time and place.**⁴ The resolution meeting need not occur if the parent and the ~~agency~~ **LEA** agree in writing to waive such a meeting, or agree to use the mediation process described in § 3028 of this Chapter. The resolution meeting:

Proposed § 3030.5 states that a parent’s “failure . . . to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing.” But this provision neither defines the term “failure” nor identifies who decides whether a “failure” has occurred or whether a delay in the due process timelines is necessary. The provision is silent on the question of what efforts to hold a meeting a LEA must make to render the absence of a meeting the parent’s “failure” rather than the LEA’s. The provision is also silent as to the parent’s right to dispute any

² Please see our comments regarding the phrase “local education agency” at the end of this letter.

³ Bold indicates an addition and a strike through a deletion.

⁴ This language tracks 5 D.C.M.R. § 3003.6(b)-(c).

assertion that they have “failed” to participate in a resolution meeting, even though factual disputes often arise.

We urge OSSE to clarify that a delay in the due process timeline will occur only when a LEA provides evidence establishing that the absence of a resolution meeting was caused by the parent’s failure and not the LEA’s. Consistent with proposed § 3030.6, the regulation should provide that LEAs must document reasonable efforts to arrange a resolution session pursuant to § 3026.4. The regulation should also require such documentation as evidence of the parent’s “failure” and provide the parent an opportunity to respond to such evidence. We urge the following changes:

→ Change § 3030.5 to read: Except where the parties have jointly agreed to waive the resolution process or to use mediation, **when a parent who has filed a due process complaint fails to participate in the resolution meeting, the LEA may request that a hearing officer delay the timelines for the resolution process and due process hearing until the meeting is held. Any such request must include evidence of the LEA’s reasonable measures to convene a resolution meeting with the parent documented using the procedures in § 3026.4. A parent shall have an opportunity to respond to the request and related evidence prior to the hearing officer ruling on the request.**

Proposed § 3030.6 does require LEAs to document their efforts to arrange resolution meetings, but it does not make clear that a LEA must prove that these efforts occurred and that they were sufficient before a hearing officer can rule on a request to dismiss a parent’s due process complaint. Nor does it provide that parents have a right to respond to assertions made by a LEA. We urge OSSE to clarify that provision:

→ Change § 3030.6 to read: If the ~~agency~~ **LEA** is unable to obtain the participation of the parent in the resolution meeting after reasonable ~~efforts~~ **measures**⁵ have been made (and documented using the procedures in § 3026.4), the ~~agency~~ **LEA** may, at the conclusion of the 30-day period, request that a hearing officer dismiss the parent’s due process complaint. **Any such request must include evidence of the LEA’s reasonable measures to obtain the participation of the parent in the resolution meeting. A parent shall have an opportunity to respond to the request and related evidence prior to the hearing officer ruling on the request.**

2) The regulations should clarify that the dispute resolution process may continue beyond 30 days without delaying the due process hearing timeline.

The regulations should encourage parties to resolve disputes prior to a due process hearing. The proposed regulations, however, miss an opportunity to correct a problem caused by current LEA practice that provides perverse incentives to cut short the resolution process.

⁵ The cross-referenced provision in § 3026.4 uses the term “reasonable measures” not “reasonable efforts.” We suggest that OSSE use consistent terminology throughout Title V.

Under current practice, when 30 days pass and parties have not reached a resolution, the largest LEA, the District of Columbia Public School System (DCPS), will not permit the individuals associated with the resolution process to continue discussing a possible settlement with the parent. This LEA instead directs any settlement negotiations through a single central office staff person, creating a process that is often both more adversarial than necessary and less efficient than possible. Proposed § 3030.8(c) would thus force parents to choose between maintaining their right to a prompt due process hearing and continuing efforts to resolve their due process complaint with school staff.

The forced choice induces some parents to forego the dispute resolution process and thus increase the litigiousness of these disputes. The forced choice also puts in conflict OSSE's dual goals of improving dispute resolution before due process hearings while enforcing a prompt timeline for due process hearings when a resolution is impossible.

A better approach is for parents to continue the resolution process with school staff without sacrificing their right to a prompt due process hearing. Like any looming trial date, a firm due process hearing timeline can provide a sense of urgency and efficiency to a dispute resolution process. That urgency is best felt by parties who are most familiar with each other and with the issues to continue negotiating.

We urge OSSE to add a provision clarifying that parents and school staff may continue the dispute resolution process without having to present a written agreement and without delaying the due process hearing timeline. We further urge OSSE to use its oversight authority to ensure that LEAs make school staff available to continue the resolution process beyond 30 days when appropriate.

We urge OSSE to make the following revision:

→ Change § 3030.8 (c) to read: Both parties agree in writing to continue the mediation at the end of the 30-day resolution period, but later, the parent or ~~agency~~ **LEA** withdraws from the mediation process. **Both parties may, without a written agreement, continue the resolution or mediation process without delaying the start of the 45-day timeline for the due process hearing in § 3030.11.**

3) The proposed regulations should clarify that continuances may not be granted for inappropriate reasons.

The proposed regulations would include for the first time a provision regarding extensions of time for due process hearings "for good cause shown." Proposed § 3030.12. This provision states the appropriate legal standard but does not include important guidance regarding the definition of "good cause" included in the Student Hearing Office's Standard Operating Procedures (SOP). Those procedures ensure that continuances will not be granted due to the unavailability of a LEA witness or attorney.⁶

⁶ District of Columbia Special Education Student Hearing Office, Standard Operating Procedures § 402(A)(2), at 23, http://osse.dc.gov/seo/frames.asp?doc=/seo/lib/seo/about/seo/pdf/Due_Process_Hearing_Standard_Operating_Procedures.pdf.

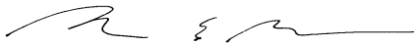
It is not clear why the proposed regulations include the “good cause” provision without including the SOP’s definition of “good cause.” We urge OSSE to either, include the definition of “good cause” included in the SOP or to delete proposed § 3030.12 entirely because it unnecessarily duplicates material in the SOP.

4) The proposed regulations should consistently refer to “local education agencies.”

The proposed regulations refer to “the public education agency.” Proposed § 3030.1. In at least one place, the proposed regulations also refer to the “LEA” (the local education agency). Proposed § 3030.1(c). The regulations should be revised to use the phrase “local education agency” or “LEA” whenever the phrase “public education agency” or “agency” is currently used. The phrase “public education agency” does not appear elsewhere in Title V and is not a generally-recognized term in education law. It also conflicts with the use of “LEA” in the largely parallel federal regulation. 34 C.F.R. § 300.510. The proposed regulations’ inconsistent use of “public education agency” and “LEA” will create confusion.

Thank you for considering these comments. If you have any questions about these comments, please feel free to contact me at (202) 467-4900 ext. 565, or sgreer@childrenslawcenter.org.

Respectfully,



Sharra E. Greer
Director of Policy

Cc: Beth Colleye
Virginia Crisman