

Tips for LEA/AEA When Conducting a Resolution Meeting

Purpose of Resolution Meeting: 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/AEA has the opportunity to resolve the dispute without having a hearing before an administrative law judge (ALJ).

CHECKLIST

First steps:

_____ Unless the LEA and AEA are already knowledgeable about the resolution meeting, the LEA and AEA carefully read all information provided by the Iowa Department of Education about the resolution meeting and the responsibilities of the agencies.

_____ LEA and AEA offer and document that a resolution meeting was offered within 15 calendar days of receiving notice of parent's due process complaint (i.e., hearing) unless all parties (parents, LEA and AEA) agree to an extension of the resolution period. This offer must be made regardless of whether the agencies' intent may have been to use another format for resolving the parent's identified written concerns.

_____ If the LEA, AEA, and parents jointly agree to waive the resolution meeting, this is documented in writing.

_____ The LEA/AEA ask the parents if an attorney will be attending with the parents. If not, the LEA/AEA do not include an attorney at the resolution meeting. If so, the LEA and AEA *may* bring their attorney.

If a resolution meeting was held:

_____ LEA/AEA convene a meeting with the parents and relevant member or members of IEP Team.

_____ The parents and the LEA/AEA jointly determine the relevant members.

_____ Each relevant IEP Team member has specific knowledge of the facts identified in the due process complaint.

- _____ LEA and AEA both have a representative who had decision-making authority on behalf of its agency and has the authority to sign an agreement in order to make the agreement “legally binding.”
- _____ The parties attempt to resolve the dispute. If an agreement is reached, the parties execute a legally binding agreement that is signed by both the parents and a representative of both the LEA and AEA who have the authority to bind each agency.
- _____ All parties are informed that any party has a right to void the resolution agreement within three business days of execution.
- _____ An agreement is made regarding all parties’ understanding of confidentiality about the resolution meeting.

If applicable:

- _____ If the LEA and AEA argue the parent’s complaint was insufficient, the resolution meeting offer is not postponed while waiting for a ruling from the ALJ.

Q & A Resolution Meeting Tips

1. ***What is the first thing a district and an AEA should do upon receiving notice that a parent has written a due process complaint?***

Answer: Most agencies will probably contact their attorney. Offer a resolution meeting to the parent as required by IDEA 2004 as soon as possible. The meeting is to be held within 15 calendar days of receipt of the written notice. IDEA does not allow allowances for difficulties in communicating with parents; therefore, if the parent is not responding there is no excuse not to offer a resolution session within the timeline. The best documentation that the requirement is met is to send a written letter to the parent in the primary language of the parent if it is known the parent is literate. Provide the “why, what, when and where” information. Make certain the parent is given a contact name and telephone number from the LEA (or AEA) if the proposed date, time and location do not work for the parent.

The agency is encouraged to initiate a phone conversation with the parent, if possible, to make certain the letter was received and understood, as well as to get a better understanding about the issues. Ask the parent if an attorney will be attending and discuss possible future actions needed such as mutual agreement on the relevant IEP Team members to attend. Document all phone contacts. Depending on the situation, a representative/s from the LEA/AEA may want to hold a face-to-face meeting with the parent prior to the resolution meeting and may visit in the parent’s home or other site, if the parent is amenable.

The parent should also be made aware of options available in addition to the resolution meeting, although these are only available if the LEA/AEA and parent *jointly* waive the resolution meeting and both *mutually* agree to use mediation or a due process hearing provided by the Iowa Department of Education.

2. ***What does the LEA/AEA do if the parent refuses to participate in a resolution meeting after the offer is made by the agencies and the LEA/AEA does not want to waive the meeting?***

Answer: The Office of Special Education Services (OSEP) has made it clear that there are no provisions that allow a parent to unilaterally waive the resolution meeting. The only way it can be waived is when the parent and LEA/AEA *jointly* agree in writing to waive the meeting or when the parent and LEA/AEA *jointly* agree to use the mediation process. In other words, the parent is required to meet if the LEA/AEA want the opportunity to attempt to resolve the due process complaint through the resolution meeting. If the parent fails to participate in the resolution meeting, the agencies would need to continue to make diligent efforts throughout the remainder of the 30-calendar day resolution period to convince the parent to

participate in the resolution meeting. If, however, at the end of the 30-day resolution period, the LEA/AEA is still unable to convince the parent to participate in the resolution meeting, OSEP believes that an LEA should be able to seek intervention by an ALJ to dismiss the due process complaint (the hearing).

3. ***Who must attend the resolution meeting?***

Answer: The key word in the law reads “relevant” member or members of the IEP Team. It does not specify “the IEP Team.” Relevancy depends on the issue/s identified in the parent’s due process complaint. Probably the most successful resolution meetings will be restrictive in its membership. Remember: all parties must come to an agreement regarding who will attend.

4. ***What if there are circumstances beyond a parent’s control (e.g., military service, hospitalization) that may prevent a parent from attending a resolution meeting in person?***

Answer: If the parent informs the LEA and AEA in advance of the meeting that circumstances prevent the parent from attending the meeting in person, it would be appropriate for the LEA/AEA to offer alternative means to ensure parent participation, including videoconferences or conference telephone calls, subject to the parent’s agreement. There is no authority to permit a court-appointed advocate to attend the resolution meeting in place of a parent, unless the public agency has appointed that individual as a surrogate parent, or the agency determines that the person is a person acting in the place of the parent (in accordance with Sec. 300.30(a)(4)).

5. ***Discussions held during mediations are considered confidential. However, IDEA 2004 is silent regarding confidentiality during resolution meetings. Are resolution meeting discussions confidential or not?***

Answer: Because there is nothing in the Act or the IDEA regulations that would prohibit the parties from entering into a confidentiality agreement as part of their resolution agreement, they may do so. However, the LEA and AEA could not require that the participants in a resolution meeting keep the discussions confidential or make a confidentiality agreement a *condition* of a parent’s participation in the resolution meeting.

6. ***What are some suggestions regarding how attorneys may be used?***

Answer: If the parent does not have an attorney in attendance at the resolution meeting, neither can the LEA or AEA. However, that does not mean that an attorney cannot be providing guidance “behind the scene,” for any party before, during, and after the resolution meeting. In fact, LEAs and AEAs typically will be contacting their attorney/s as soon as the notice for a due process complaint is received. Parents, LEAs, and AEAs may want to have the agreement reviewed before signing or reviewed within three business days if it is signed.

7. ***What if a parent brings an attorney to the resolution meeting without advanced notice?***

Answer: The LEA and AEA will need to make a decision whether to continue without their own attorney. The agencies have the option of refusing to hold the meeting at that time but must still adhere to the 15-calendar day period when scheduling another.

8. ***Who should facilitate the resolution meeting?***

Answer: The law is silent on that. There is merit in requesting an outside facilitator (or mediator) who is not employed by the LEA/AEA. There are two options available, using the AEA Resolution Facilitator Process: (a) Contact another AEA Resolution Facilitator Coordinator and request a facilitator from that AEA; or (b) Contact Eric Neessen or his secretary at the Iowa Department of Education and request a state mediator to serve as a facilitator. A facilitator may enhance the chances of reaching a resolution. The district/AEA could explain to the parent that an impartial person with no stake or interest in the outcome would be helpful with assisting the parties to explore ways to resolve the identified concerns. If an outside facilitator is going to be used, the parent will need to agree on this person before the resolution meeting is held.

9. ***What are some useful strategies to use to help resolve the due process complaint during the resolution meeting?***

Answer: Review the purpose of the resolution meeting. Make certain parties have scheduled an adequate commitment of time that may allow for a resolution but all participants should have an understanding how long the meeting will last. All parties should help establish ground rules. Have an understanding of why the parent filed a complaint. Listen carefully to the parent, and then ask questions if not fully understanding anything being said. Decide if all relevant people are in the room. Don't hesitate to allow any party to contact other people, if necessary, to resolve the

complaint. (This could be done via private telephone conversations or even conference calls.) This resolution meeting provides the opportunity for the LEA/AEA to resolve the dispute without going through a time-intensive and costly due process hearing.

10. ***Must the IEP Team reconvene to sanction the decisions agreed to in a resolution meeting?***

Answer: Unless the agreement specifically requires that the IEP Team reconvene, there is nothing in the Act or regulations that requires the IEP Team to reconvene following a resolution agreement that includes IEP-related matters. The resolution meeting is made up of relevant IEP Team members with the authority to write a legally binding agreement. If the agreement involves IEP-related matters, the IEP will need to be amended to reflect the agreement. Any time changes are made on the IEP, the LEA/AEA must ensure that the child's IEP Team is informed of those changes. A parent must be provided with a revised copy of the IEP with the amendments incorporated.

11. ***What if the resolution meeting is held but the dispute that formed the basis for the due process complaint cannot be settled?***

Answer: A due process hearing may occur but the law allows the LEA/AEA a 30-calendar day resolution period (starting from the day the LEA/AEA receives the written due process complaint). Therefore, even if no settlement comes out of the resolution meeting, the LEA/AEA can continue trying to address the parent's issues. This 30-day period may be adjusted if the parties agree in writing that no agreement is possible. A copy of this jointly signed adjustment should be sent to the Iowa Department of Education and then the ALJ will be notified so a hearing can be scheduled.

12. ***It seems there is something about a 45-calendar day timeline for the due process hearing. When does that timeline start?***

Answer: The new language specifies that the 45-day timeline for the due process hearing starts the day after one of the following events: (a) both parties agree in writing to waive the resolution meeting; (b) after either the mediation or resolution meeting starts, but before the end of the 30-day resolution period, both parties agree in writing that no agreement is possible; and (c) if both parties agree in writing to continue the mediation at the end of the 30-day resolution period, but later the parent or public agency withdraws from the mediation process.

13. ***If the signed settlement agreement were perceived as having been breached by one party would the other party need to seek enforcement in a State court of competent jurisdiction or district court of the United States?***

Answer: The act is clear that exhaustion of administrative remedies is not required. States have the option of allowing resolution agreements and mediation agreements to be enforced through other mechanisms, provided that the other enforcement mechanisms do not operate to deny or delay the right of any party to the agreement to seek enforcement in an appropriate State or Federal court. Refer to the Iowa Administrative Code:

41.153(5) Failure to comply with due process decision, mediation agreement, resolution meeting agreement. A complainant may allege a public agency has failed to comply with a due process hearing, or a mediation agreement, or a resolution meeting agreement. If the complaint is substantiated, the State will grant appropriate relief.

If you have questions, contact the Bureau of Student and Family Support Services; Iowa Department of Education: Eric Neessen, 515.281.5766, Eric.Neessen@iowa.gov or Thomas Mayes, 515.242.5614, Thomas.Mayes@iowa.gov