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Resolution Meetings: State Supports and Practices

by Kelly Henderson, Ph.D. and Philip Moses, M.A.

INTRODUCTION

As evidenced by language added to the Individuals with Disabilities Education Act of 2004 (IDEA), Congress recognized the importance of providing additional opportunities for early dispute resolution when parents and school districts disagree over services to be provided to a student with disabilities. The implementing IDEA regulations state, in part:

- (a) Resolution meeting. (1) Within 15 days of receiving notice of the parent's due process complaint, and prior to the initiation of a due process hearing ..., the LEA [local educational agency] must convene a meeting with the parent and the relevant member or members of the IEP [individualized education program] Team who have specific knowledge of the facts identified in the due process complaint that—*
- (i) Includes a representative of the public agency who has decision-making authority on behalf of that agency; and*
 - (ii) May not include an attorney of the LEA unless the parent is accompanied by attorney.*
- (2) 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. (§300.510)*

This brief analysis, a joint effort of Project Forum at the National Association of State Directors of Special Education (NASDSE) and the Consortium for Appropriate Dispute Resolution in Special Education (CADRE), was produced as part of Project Forum's cooperative agreement with the U.S. Department of Education Office of Special Education Programs (OSEP).

METHODOLOGY

Project Forum conducted a survey of all state education agencies (SEAs) on the subject of alternate dispute resolution with the results published in May 2008¹. Based on responses in that survey to questions about resolution meetings, eight states were selected for this

¹ See *Optional IDEA Alternative Dispute Resolution* at www.projectforum.org or www.directionservice.org/cadre.

study: *Alabama, Alaska, Arizona, Connecticut, Oklahoma, Pennsylvania, Virginia* and *Wisconsin*. Project Forum and CADRE designed congruent interview protocols for each state incorporating their reported current resolution meeting processes. Each protocol addressed the available types of supports for resolution meetings and included questions about the experiences of the states in implementing resolution meetings.

Using the customized protocols, Project Forum and CADRE staff conducted nine interviews with 10 SEA staff in these eight states during the spring and summer of 2008. At the recommendation of SEA staff, three other persons involved in the implementation of resolution meetings also were interviewed, including the director of a state office for dispute resolution and the directors of two state-supported special education mediation or resolution centers.

FINDINGS

Types of Supports for Resolution Meetings

Five specific types of supports that SEAs provide to LEAs were asked about in the survey and SEA responses were confirmed or clarified in the interviews:

- regulation of LEA implementation of resolution meetings;
- guidance to LEAs;
- direct facilitation of resolution meetings by the SEA;
- training on facilitation of resolution meetings; and
- collection of data on use, outcomes or satisfaction with resolution meetings.

An additional open-ended question captured any other supports a state was providing.

State Regulations and Policy Guidance

Two of the eight states reported that they have regulations regarding resolution meetings and another has draft regulations that include resolution meeting provisions. These state regulations typically mirror federal regulations. Another two states include information about resolution meeting requirements in their policy and procedures manuals, under due process procedures. Three states report they do not have written "policy" but do provide guidance for school districts and parents via written procedural safeguards documents, parents' guides and other technical assistance information.

Guidance to LEAs

Guidance is provided to local districts in three ways. State staff often provide informal guidance and consultation to administrators and sometimes directly to parents who seek additional clarification on resolution meetings. Written publications and sample forms for resolution meetings are also available in seven of the eight states, though the specific focus on resolution meetings in these publications varies somewhat. *Alaska* and *Oklahoma* each have handbooks or manuals that include resolution meetings as one of many topics; *Alabama* makes available a resolution meeting agreement template; and *Pennsylvania* and *Wisconsin* have each published a handbook or brochure specific to resolution meetings. *Virginia* has a technical study committee to examine the issue of resolution meetings and anticipates a brochure for LEAs and parents will be published soon.

Trainings and other direct technical assistance opportunities are also utilized to guide LEAs. Sessions at state conferences of local special education administrators is a common venue for sharing information on resolution meetings. For example, *Wisconsin's* Special Education Mediation System has conducted general training at several annual conferences for local special education staff and parents, during which the availability of mediators to facilitate due process resolution meetings was emphasized.

Basic information on the availability of resolution meetings is also provided on several SEA websites, and two state respondents noted that parent training and information centers (PTIs) also help disseminate information.

Direct Facilitation by SEAs

The role of the SEA in resolution meeting facilitation varies considerably across the eight states that were interviewed. Four SEAs do not play a direct role in facilitating resolution meetings, but encourage its use at the local level. Two states contract with outside organizations to conduct mediation and those two organizations—*Alaska* Mediation Services and the *Wisconsin* Special Education Mediation System—are available to facilitate resolution meetings, but few facilitators have been requested. Another state is considering the use of trained “meeting leaders” who will be shared across school districts to help run better resolution meetings.

Two states (*Oklahoma* and *Pennsylvania*) have undertaken pilot projects to support resolution meeting facilitation more directly. *Oklahoma's* pilot, initiated in 2007-2008, is administered by the Special Education Resolution Center at Oklahoma State University. Of 29 due process complaints, parties in 12 cases pursued a resolution meeting facilitated by a trained mediator. Ten full resolution settlement agreements resulted. In addition, *Oklahoma* interviewees report high satisfaction among the parties and believe that constituents across the state are coming to view the process positively. As a result, schools now request facilitation when a due process complaint has been filed and the state plans to offer the resolution meeting facilitation service for every due process complaint made. *Pennsylvania* is piloting resolution meeting facilitation in 11 of its 29 intermediate education units, targeting those that already use IEP facilitation. While there has been some resistance from both school district and parent attorneys to the use of facilitators as being unnecessary to the process, in those cases where resolution meetings have been facilitated the outcomes have been successful. To date, three resolution meetings have been facilitated with all three reaching agreements. In each instance, the due process hearing request was withdrawn. *Pennsylvania's* and *Oklahoma's* pilot programs both incorporate training of the facilitators on issues unique to resolution meetings.

Training on Facilitating Resolution Meetings

SEAs vary in the support they provide to local service providers and family members to more effectively participate and manage resolution meetings. In several states, trainings on resolution meetings have been delivered to a broad audience. In *Alabama* for example, a session on how to have a successful resolution meeting was presented at the state's annual professional development conference. *Connecticut's* State Education Resource Center has provided training on resolution meetings. Respondents in *Alaska* and *Wisconsin* reported that the outside organizations with which the SEA contracts to conduct mediation are available to provide specific training on facilitating resolution meetings, but this has not

occurred to date. *Virginia's* technical study committee proposal may include training of "meeting leaders" in principles of facilitation to support better resolution meetings.

Data Collection

While all states maintain data on the number of resolution meetings held and the number of resolution settlement agreements reached to meet federal reporting requirements, several states collect additional information on resolution meetings (e.g., outcomes, participation). In *Connecticut*, the SEA collects data on the number of voided agreements, instances when parties waived the process and instances when parents failed to attend or the school failed to arrange the meeting. *Virginia* collects information on the timeliness of the process. *Pennsylvania* and *Oklahoma* collect additional information about the outcomes of their resolution meeting pilot projects through evaluations completed by the parents and school parties involved. *Pennsylvania* has requested electronic survey feedback from all LEAs within the intermediate unit areas participating in the pilot.

The extent to which states collect specific information on resolution meeting settlement agreements varies. For example, some states request copies of all settlement agreements from LEAs while other states collect information only about the number of resolution meetings and their outcomes.

There also appears to be little consistency across states in what is considered and counted as a resolution meeting settlement agreement for data collection purposes. Some states collect data and report using different definitions and terminology for the various types of agreements made. In one state, for example, a three-day "remorse" period must be written into the agreement to be considered a resolution meeting *written settlement agreement*; otherwise, it is considered a settlement agreement outside the resolution process.² Timelines contribute to these distinctions. In *Alabama*, agreements that result from a resolution meeting that was scheduled outside of the 15-day timeline are reported in their high "resolved without a hearing" rate. Hearing officers and resolution meeting facilitators are used by some states to collect data on the use and outcomes of resolution meetings. They are often responsible for determining if the resolution meeting resulted in a "full" resolution settlement agreement and thus the due process complaint being withdrawn or being counted in some other status category. In cases where the resolution meeting results in resolution of some, but not all, issues identified in the due process complaint, those resolved issues may be addressed in some type of formal agreement. If, and how these partial agreements are classified and counted is not consistent across states.

Frequency of Resolution Meetings

Across the eight states interviewed, the number of resolution meetings held in 2006-2007 ranged from 10 to 624³ and the percentage of resolution meetings that resulted in resolution session settlement agreements (based on Part B, State Performance Plan Indicator 18) in 2006-2007 ranged from 18% to 80%. Data reporting to the U.S.

² Federal regulations at §300.510(d) refer to "written settlement agreements" reached at the resolution meeting. In practice, however, settlement agreements are often reached outside of the meeting setting.

³ *Pennsylvania's* 624 resolution meetings was an outlier. The next largest number of resolution meetings held was 62.

Department of Education on resolution meetings began in 2005-2006 and some states' data on the number of resolution meetings held has varied considerably across the years. However, several state interviewees noted that, as awareness of resolution meetings grows, they anticipate growth and subsequent stabilization of the number of resolution meetings held.

Factors that Impact Use of Resolution Meetings

Increased Opportunities for Resolution

Almost all states consider the availability of resolution meetings to be beneficial and the value of resolution meetings to be an additional opportunity for parties to discuss a conflict or the issues that underlie it. Generally, for parents and school personnel who seek to resolve an issue prior to a hearing, both resolution meetings and mediation provide important opportunities for parties to resolve issues and "walk away satisfied." Data from evaluations of the *Oklahoma* pilot project indicated that 95% of the respondents said that the resolution session ended in an agreement and 100% said they would use a facilitator again and would recommend the use of a facilitator to others. Resolution meetings also appear to support a more careful progression towards due process hearings. *Virginia* reports that resolution meetings encourage parties to focus on the issues and their responsibilities before moving to a hearing. Even in situations where a resolution settlement agreement is not reached, discussions at resolution meetings have in some cases led to a more focused exploration of issues addressed later at a hearing.

In many cases, school district administrators are unaware of the conflict prior to the due process complaint being filed by a parent and the resolution meeting provides a welcome opportunity for the district to address grievances immediately. The due process complaint is often withdrawn following the resolution meeting. This is particularly true when the conflict was strictly focused at the building level or involved a mismatch of personalities within an individual setting. In such cases, the resolution meeting allows a wider group of professionals to interact with the parents and work towards more amenable solutions.

Respondents in two states (*Connecticut* and *Pennsylvania*) noted that in some cases the resolution meeting serves as an extension of the IEP meeting. Issues that were raised or unresolved at an IEP meeting become the focus of the resolution meeting, which may be attended by the same participants as the initial IEP meeting. Respondents also recalled a few occasions in which the resolution meeting resulted in a reconvening of an IEP meeting and the withdrawal of the due process complaint.

Mediation

A major finding of this study is the impact that mediation has on resolution meetings and the impact resolution meetings have on mediation. Some states have seen an increase in mediation use because primary parties want a neutral third-party involved. For example, *Alabama* has witnessed an increase in the use of mediation, and *Connecticut* reports the number of resolution meetings is declining while mediations have increased. In *Wisconsin*, parties are generally satisfied with the mediation option available and even prior to IDEA 2004, the rate of due process hearing requests had declined. *Wisconsin's* use of mediation currently outpaces the use of resolution meetings. Other states have experienced a decrease in mediation use because disputes are now being resolved during the resolution period. For instance, while LEAs convene resolution meetings, *Alaska's* efforts to promote

mediation are resulting in an increased use of mediation and a general decline in due process hearings.

When asked about the frequency of mediations following an unsatisfactory resolution meeting, most states reported that such a sequence is the exception; rather, parties dissatisfied with the outcome of a resolution meeting typically pursue a due process hearing immediately.

State Complaints

In some states, the use of resolution meetings appears to also play a role in the filing of written state complaints, although with less of an impact than the use of mediation. The number of such complaints in *Oklahoma* has dropped, perhaps due to the availability of resolution meetings as an additional dispute resolution avenue. In years past, *Oklahoma* experienced several cases in which following a due process complaint and subsequent, presumably unsatisfactory mediation, parents would withdraw the due process complaint and then file a written state complaint. *Arizona* has a history of relatively high use of written state complaints, but sees the resolution meeting as an opportunity to bring parties together to communicate about their concerns, possibly stemming the need for some families to file written complaints.

Confidentiality and Other Protections

In several states, confidentiality guarantees limit the use and viability of resolution meetings. In *Wisconsin*, a state statute protects confidentiality in the mediation process, but resolution meetings are not considered to carry these same protections under IDEA or any state statutes. When families inquire about resolution meetings, mediation center personnel offer information about the limitations regarding confidentiality in resolution meetings. *Connecticut* cited the lack of resolution meeting confidentiality provisions in IDEA as one of the factors that serves to discourage use of resolution meetings and has led to an increase in mediation.

Related to this are the perceived protections of a neutral third party provided under mediation that do not apply for resolution meetings. Particularly in states where *facilitated* resolution meetings are not typically used, interviewees reported that the lack of a neutral third party, similar to that provided through mediation, discourages parties and many waive their option to participate in resolution meetings.

The contractual nature of a written and signed resolution settlement agreement is also a concern to some. Because of the lack of a formal facilitator, attorneys for both parents and LEAs in *Alabama* are leery of the resolution meeting process and often advise their clients not to sign the agreements. Many attorneys prefer mediation in which a neutral third-party is involved. In *Wisconsin*, the consequences for the resolution meeting facilitator in negotiating a "contract" without the safety net of confidentiality protections are unclear. The resolution settlement agreement is considered by some to be non-binding, since the parties have a right to void the agreement within three days following the resolution meeting; this was viewed as a discouragement for some.

As a result of these perceptions, several respondents shared their hesitancy about actively encouraging the use of the resolution meeting. Because of the lack of knowledge about personalities and histories of each unique case, it might be irresponsible to steer parties into

a resolution meeting if the conflict was beyond the point where such a meeting could be constructive. Two respondents (*Arizona, Wisconsin*) reported that when contacted by parents about resolution meetings, they openly share the distinction that resolution meetings are district-led, while mediations provide a state-supported neutral party.

Presence of Attorneys

IDEA prohibits LEAs from bringing attorneys to the resolution meetings, unless one accompanies the parents. Across the states interviewed, the presence of attorneys at resolution meetings is rare. Several respondents noted that many parents simply cannot afford an attorney, and thus districts do not have counsel in the resolution meetings.

While attorneys often do not attend the resolution meetings, the provision appears to influence both the implementation of resolution meetings and the likelihood of waiving the resolution meeting. In cases where resolution meetings are conducted without attorneys, counsel may still influence the process by engaging in a type of remote consultation. Attorneys may be contacted during breaks in the resolution meeting, or even by telephone during the meeting, which can confuse and serve as an impediment to reaching agreement. Attorneys can play a role post-meeting, particularly in situations where a settlement agreement was drafted, by becoming involved in redrafting or revising the agreement following the meeting. This may prolong the process of reaching a final agreement.

Attorneys for parents appear to be more likely to discourage resolution meetings, particularly in states where facilitated resolution meetings are less common. For example, in *Connecticut*, many parents' attorneys counsel against resolution meetings in favor of mediation and in *Alabama*, parents are often advised to "not sign anything" during the resolution meetings, thus potentially rendering the process ineffectual.

Rescission

While all respondents were aware of the three-day period following the resolution meeting during which either party can void the agreement, few states had any formal data. No state respondent knew anecdotally of any cases where an agreement had been rescinded. As noted above, the option for voiding the agreement was considered by a few respondents as a factor that potentially discourages the use of resolution meetings in favor of other dispute resolution processes.

State Needs to Support Implementation of Resolution Meetings

When asked about challenges states were having with implementation of resolution meetings, respondents identified several needs. First, additional and clearer guidance to LEAs about resolution meeting procedures is needed. Local administrators are confused about who should attend resolution meetings and would benefit from "step by step" guidance. Several states reported using CADRE materials to address dispute resolution techniques more generally, but materials targeted to the specific process of resolution meetings would be welcome by local districts.

Second, the IDEA-established timelines for resolution meetings are both difficult to monitor and challenging to meet. State personnel have a limited ability to track the 15-day period between filing of the due process complaint and convening of the resolution meeting, particularly in states that play a less central role in the implementation of resolution

meetings. Almost all states indicated that the 15-day timeline was too short. Interviewees also identified as a need the clarification of the additional timeline requirements in 34 CFR §300.510, regarding a 30-day resolution period and the triggers for the 45 day timelines for due process hearings.

Third, states would benefit from federal guidance on what qualifies as a written settlement agreement for reporting purposes. Factors such as whether the agreement is actually signed at the resolution meeting, whether it is signed within the initial 15 days or if an agreement was initiated but not finalized at the resolution meeting all contribute to an inconsistency in what states consider and count as written settlement agreements. Clarification would not only support better and more consistent data collection, but also provide helpful distinctions between resolution meeting settlement agreements and other settlements made following a due process complaint. Some respondents seek clarification in the form of a broadened approach to timelines. For example, a written settlement that results from a resolution meeting, but prior to a fully adjudicated hearing, would be considered a resolution settlement regardless of which timeline the process falls under. Otherwise, all other written settlements that did not begin at a resolution meeting would be counted as other settlement agreement.

CONCLUSION

While development of SEA policies and implementation of procedures for resolution meetings varies across states, this relatively new process appears to hold promise as an additional avenue for resolving disputes between parties prior to a due process hearing. SEAs generally welcome the opportunity for parents and LEAs to convene soon after filing of a due process complaint and address concerns and pursue resolution. States interviewed seek clarification about some aspects of the resolution meeting process including timelines, what constitutes a resolution meeting settlement agreement, issues related to confidentiality and the contractual implications of the meetings and subsequent settlement agreements. States are more likely to develop and promote the resolution meeting when they can assure that this new dispute resolution process represents an effective option within the framework of collaborative decision making and conflict resolution specified by IDEA.

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