

**OSEP'S FINDINGS OF NJDOE'S NONCOMPLIANCE
WITH IDEA DISPUTE RESOLUTION PROCEDURES**

On September 20 and 21, 2018, the United States Department of Education, Office of Special Education Programs ("OSEP") conducted an on-site visit at the New Jersey Department of Education ("NJDOE"). By letter dated May 6, 2019, OSEP informed the NJDOE of noncompliance with respect to New Jersey's policies and procedures pertaining to: 1) due process hearings; 2) resolution meetings; 3) a child's status during proceedings; and 4) expedited due process hearings. NJDOE is now required to take corrective action and submit documentation supporting their changes to OSEP within 90 days. The changes most affecting school districts are summarized below.

1. Due Process Hearings – No More “Federal Days”

The Individuals with Disabilities Education Act requires that due process hearings be concluded, and a decision mailed to the parties, within 45 calendar days of completion of the 30-day resolution period.¹ The current practice of the Office of Administrative Law ("OAL") in counting "federal days" (for example, only those days of an actual conference or hearing day) must end. While extensions of time still may be granted at the request of a party for a specific time period, Districts can expect final decisions to be issued much more quickly.

Notably, calendar days include days when school is not in session, even during the summer months. Districts should be prepared to make their witnesses available during school breaks when necessary.

2. Resolution Meetings – Compliance Must Be Tracked

Districts must convene a resolution meeting within 15 days of receiving notice of a due process complaint unless the district and the parent(s) agree in writing to waive the meeting or use the mediation process. The 45-day hearing timeline commences thereafter. The NJDOE must now track whether a district convenes a resolution meeting unless it is waived or the parties choose mediation and, if a district fails to do so, the NJDOE must make a finding of the district's noncompliance and ensure correction. (Although not

¹ 34 C.F.R. § 300.510 states that "[t]he 45-day timeline for the due process hearing ... starts the day after one of the following events: (1) Both parties agree in writing to waive the resolution meeting; (2) After either the mediation or resolution meeting starts but before the end of the 30-day period, the parties agree in writing that no agreement is possible; (3) 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."

REPLY TO

387 PARK AVENUE S
5TH FLOOR
NY, NY 10016
212 278 0058

450 MAIN STREET
METUCHEN, NJ 08840
732 243 9588
FAX: 732 243 9590

309 FELLOWSHIP RD
STE 200
MT LAUREL, NJ 08054
863 350 1030

discussed in OSEP's letter, a parent's failure to participate in the resolution meeting may delay the timelines for the resolution process.)

3. A Child's Status During Proceedings – Stay Put Applies Whenever a Parent Files

Contrary to what districts have previously been told by NJDOE and what is set forth in New Jersey's Special Education Dispute Resolution Procedures Manual and the PRISE Handbook, "stay put" applies even if a parent files for due process subsequent to the 15-day waiting period after a proposed change to a student's program or placement. OSEP further states that "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." If there is a disagreement regarding what is the current placement, an Administrative Law Judge ("ALJ") should decide.

4. Expedited Due Process Hearings – No Sufficiency Challenges and No Adjournments

A due process complaint is deemed sufficient unless the district objects in writing, within 15 days. OSEP clarified that "sufficiency challenges" do not apply to requests for expedited due process proceedings.

Additionally, the timelines for expedited due process hearings must be followed. A resolution session must occur within 7 days (unless the parties agree in writing to waive the meeting or to use mediation); the hearing must occur within 20 school days; and the ALJ must make a determination within 10 school days. There is no provision permitting a hearing officer to grant an extension of the timelines for expedited due process hearings.

Should you have any questions or concerns, the attorneys at The Busch Law Group are available to assist you.

This communication does not create an attorney-client relationship. The information contained herein is provided for informational purposes only and should not be construed as legal advice. No recipients of this correspondence should act or refrain from acting on the basis of any content without seeking the appropriate legal or other professional advice on the particular facts and circumstances at issue from a licensed attorney. The Busch Law Group expressly disclaims any and all liability with respect to actions that may or may not be taken based upon any or all of the content of this correspondence.