



Wisconsin Special Education Mediation System

The Resolution Meeting: A New Option to Resolve Issues in Special Education



Developed by

Nissan Bar-Lev, Director of Special Education, Cooperative Educational Service Agency 7 (CESA 7)

Jan Serak, Executive Co-Director, Wisconsin Family Assistance Center for Education, Training & Support (WI FACETS)

Wisconsin Special Education Mediation System

The Resolution Meeting: A Guide for Parents and Educators

Introduction

Parents, teachers, administrators and others may have questions about the resolution meeting– what it is and how it works, when it may be used, and how to participate effectively.

This guide has been developed by the Wisconsin Special Education Mediation System (WSEMS) to help parents of children with disabilities and schools resolve their disagreements. Hopefully, progress will also be made during the resolution meeting in reestablishing a good partnership between the parents and schools, and helping children get needed services.



This Guide contains:

- ◆ Resolution Meeting: What it is and how it works.
- ◆ Federal Statutes
 - IDEA 2004
 - Final IDEA 2004 Regulations
- ◆ Sample Forms

Copyright © 2006. Nissan B. Bar-Lev and Janis M. Serak. All rights reserved. This document was made possible by funding from the Wisconsin Department of Public Education, IDEA grant number 2006-9907-17. Its content may be reprinted in whole or in part with credit to WDPI acknowledged. However, reproduction of this document in whole or in part for resale is not authorized.

Resolution Meeting

IDEA 2004 added a new form of early dispute resolution – the resolution meeting.

- ◆ The law now requires the local education agency (LEA) and parents to have a meeting, called a resolution meeting, when one party has requested a due process hearing.
- ◆ The purpose of the meeting is for the party to discuss the basis of the due process hearing request, and the facts that form the basis of their hearing request.
- ◆ The meeting gives the school representative and parents an opportunity to resolve the dispute that is the basis of the hearing request.
- ◆ The meeting is a final opportunity for a face-to-face meeting before the formality of the due process hearing begins and the hearing officer has all the decision-making power regarding the situation.
- ◆ **In Wisconsin, the Wisconsin Special Education Mediation System (WSEMS) can provide a neutral person to help facilitate the meeting if requested by the parents and the school.**
- ◆ There is no charge to the parents or school for this service.

Waiver

The resolution meeting may be mutually waived by a written statement signed by all parties.

- ◆ If parents and the school representative agree, they may waive their right to participate in the resolution meeting (see DPI waiver form on page 9). Then, they have two options:
 1. Proceed to a due process hearing.
Or
 2. Request mediation instead.
 - Mediation is the best option when requested as early in the dispute as possible and when the participants need assistance to resolve a specific issue.
 - Under Federal and state law, mediation may be used for disputes that deal with evaluation, disability, identification, placement, IEP issues, or provision of free, appropriate public education (FAPE). These categories are very broad and can fit most any issue that comes up related to special education.

Participants

The participants in the resolution meeting include:

- ◆ Parents of the child
- ◆ School representative (must have decision-making authority on behalf of the school).
- ◆ Relevant member(s) of the IEP team
- ◆ The participants in the resolution meeting must have specific knowledge of the facts identified in the due process complaint.

**IEP Team
Members**

**School
Rep.**

Parents



◆ The parents and the school representative decide who should be present at the resolution meeting. The school district may not bring an attorney to the resolution session unless the parent is accompanied by an attorney.

◆ Note of caution: IDEA 2004 does not require parents to notify school districts if they will be bringing an attorney to the resolution meeting.

In such a case, school districts may decide to reschedule the meeting to allow for their attorney's participation. This will result in further delaying the opportunity to resolve the issues.

- ◆ Our recommendation: when parents and the school representative decide on the "relevant" members of the IEP team to participate in the resolution session, they should also discuss whether attorneys will participate in that meeting.
- ◆ If the school is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made (documentation needed), the district may, at the end of the 30-day period, request that the hearing officer dismiss the parent's due process hearing request.

Resolution Meeting Timeline

IDEA requires the resolution meeting to be **held within 15 days** of the school district receiving notice of the parents' due process hearing request.

- ◆ If the school district fails to hold the resolution meeting within 15 days of receiving notice of a parent's due process complaint or fails to participate in the resolution

meeting, the parent may ask the hearing officer to begin the due process hearing timeline.

- ◆ The failure of the parent to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held (except where the parties have jointly agreed to waive the resolution meeting or to use mediation).
- ◆ The resolution meeting may be held in one or more sessions within 30 days of receiving notice of the parents' due process hearing request.
- ◆ If the school district does not resolve the due process hearing complaint to the satisfaction of the parents **within 30 days**, the due process hearing may proceed. The timelines for the due process start at this point (on day 31).

Expedited Resolution Meeting Timeline

IDEA specifies requirements for expedited resolution meetings, such as when there is an appeal of discipline action.

Unless the parents and school district agree in writing to waive the resolution meeting, or agree to use mediation:



- A resolution meeting must occur **within 7 days** of receiving notice of the due process complaint; and

- Unless the matter has been resolved to the satisfaction of both parties **within 15 days** of the receipt of the due process complaint, the due process hearing may proceed.

Attorney's Fees

No attorney's fees are awarded in the resolution meeting, since this meeting shall not be considered to be:

- ◆ A meeting convened as a result of an administrative hearing or judicial action; or
- ◆ An administrative hearing or judicial action for purposes of 34 CFR 300.517 (attorney's fees).

Before the Resolution Meeting (using an external neutral facilitator)

- ◆ The parents or school district contact the WI Special Education Mediation System to request a facilitator from the WSEMS roster of neutrals to facilitate their Resolution Meeting.
- ◆ The facilitator may help the participants to find a convenient location, date, and time to meet. Resolution meetings may be held in libraries, community centers, the school, school district offices, attorneys' offices, or other locations agreeable to the participants.
- ◆ The facilitator may help the parents & school decide who else may be present at the meeting.

The Resolution Meeting (using an external neutral facilitator)

While the resolution meeting does not have a required format, most meetings with a facilitator include some of the following aspects:



- ◆ Everyone sits around a table with the facilitator in a relaxed, informal manner. The facilitator explains the resolution meeting requirements including timelines and the role of the facilitator.
- ◆ The facilitator asks each participant to explain his or her viewpoints on the situation.
- ◆ The facilitator may ask questions to help the parents and school clarify the issues and gain a better understanding of everyone's underlying reason (interest) for the issues.
- ◆ The facilitator helps the participants work together to suggest a variety of options to resolve the issues.
- ◆ The facilitator helps the participants discuss the options.
- ◆ Anyone may ask the facilitator for a break at any time, or the facilitator may decide to call for a break.

- ◆ A resolution meeting may last from 1 hour or longer. The parents and school are usually asked to agree to a general schedule before the session begins. Sometimes more sessions are needed.
- ◆ If there is agreement, the parents and school work together to write down how they have decided to resolve their dispute.
- ◆ If there is no agreement, the due process hearing may occur.

Before the Meeting (without a facilitator)

- ◆ School staff, usually the special education director, will ask the parents if they are planning to bring anyone to the resolution meeting (such as, their child, a relative or friend, or an attorney)
- ◆ School staff will find a location, date, and time for the resolution meeting that is convenient for the parents and other participants. Resolution meetings may be held in libraries, community centers, the school, school district offices, attorneys' offices, or other locations.

The Meeting (without a facilitator)

There is no required format or process for the resolution meeting. However, the resolution meeting might take the following form:

- ◆ Participants are seated around a table in a relaxed, informal manner.
- ◆ Each of the participants describes the issues and concerns from their individual perspectives.
- ◆ Everyone should then have the opportunity to ask questions of each other in order to clarify the issues and also to gain a better understanding of everyone's underlying reason (interest) for each issue and concern.



The participants work together to suggest a variety of options to resolve the issues. The participants discuss the options. If there is agreement, the parents and school representative work together to write down how they have decided to resolve their dispute. If there is no agreement, the due process hearing may occur.

Written Agreement

If a resolution of the dispute is reached during the resolution meeting, it must be put in a written agreement.

- ◆ Both the parent and the school representative must sign the agreement.
- ◆ Suggestions for writing an agreement include:
 - Be as specific as possible. Include specific details about: who does what, when and where. Remember - the “devil is in the details”. Make sure to leave nothing to chance. Make certain that the agreement is measurable and attainable.
 - Use plain language to make sure that everyone understands the agreement. Avoid using such words as “soon,” “often,” or “reasonable.” They have different meanings to different people. Use very specific terms such as “3 times per week,” “starting on Monday, February 16th,” “etc.
 - Include a date for a time to “check-in” with each other to decide if another meeting is needed to address any issues that may arise in carrying out the agreement.
- ◆ Either the parents or school district may void the agreement within 3 business days.
- ◆ This document is enforceable in state or federal court.
- ◆ Parties may want to consult their attorneys to review a draft of the agreement before signing.
- ◆ If the agreement deals with IEP related issues, this information needs to be incorporated into the IEP as soon as possible.

Confidentiality

- ◆ There is no legal requirement to keep discussions in the resolution meeting confidential.
- ◆ A confidential agreement could be considered for parties to sign at the beginning of the session, but the legal effect of such an agreement is unclear.

NOTE: The two sections below reflect the personal opinions of some parents, parent advocates, and school district personnel about the potential advantages and concerns of the resolution meeting are listed below.

Potential Advantages of the Resolution Meeting

◆ Early Intervention is preferable.



•An issue may develop between a parent and the classroom teacher without the knowledge of the special education director. This is more likely to occur in a regional center, where the school district where the child attends school in one building and the office of the director is housed in a different location. The resolution meeting provides an opportunity to the special education director to intervene as early as possible.

▪Given the long-term relationship between parent and school officials (i.e., entitlement of services through age 21), the resolution meeting will give them an opportunity to establish a partnership that will promote collaboration and continued partnership in the future.

◆ Communication

- The informality of the resolution meeting provides an opportunity for the parents to meet with the special education director and other educators, perhaps for the first time since the development of issues, regarding the education of their child. This meeting may improve communication and future collaboration.

◆ Building trust

- The resolution meeting is an opportunity for educators to establish, or reestablish, trust with the parents. As the parents and educators work on building trust, they may choose to contact each other in the future, before differences escalate.

Potential Concerns of the Resolution Meeting

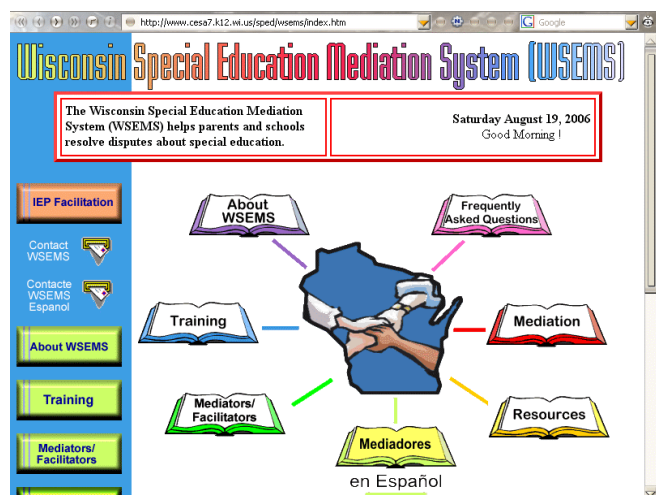
- ◆ **Mandatory.**
 - The resolution meeting is required. When parties are forced to meet, rather than just have the option to meet “voluntarily” (as in mediation), they may just go through the process and have no real interest to settle.
- ◆ **Delay and expense.**
 - The unfortunate consequence of the resolution meeting is that it may cause additional delay and expense for the parties.
- ◆ **Negotiation.**
 - Either the parents or school may not be willing to discuss the issues contained in the due process hearing request – and may just remain “positioned” during the resolution meeting rather than take the opportunity to talk about possible options to resolve the situation.
- ◆ **Missing participants.**
 - The resolution meeting may not include all of the appropriate members from the IEP team to discuss and help resolve the disagreement.
- ◆ **Date of meeting**
 - IDEA 2004 requires the school district to respond to a parent’s request for a due process hearing within 10 days. The parent might decide to wait to schedule the resolution meeting until after receiving the school’s response which may slow the process.
- ◆ **Confidentiality**

IDEA 2004 is silent on confidentiality during the resolution meeting

Additional Information

For more information, or to request a facilitator from WSEMS for a resolution meeting, contact the Wisconsin Special Education Mediation System:

Toll-free: 888-298-3857
<http://www.wsems.us>
Email: jane@wsems.us



IDEA 2004

[615(f)(1)(B)(i)] RESOLUTION SESSION

`(i) PRELIMINARY MEETING- Prior to the opportunity for an impartial due process hearing under subparagraph (A), the local educational agency shall convene a meeting with the parents and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the complaint--

`(I) within 15 days of receiving notice of the parents' complaint;

`(II) which shall include a representative of the agency who has decision making authority on behalf of such agency;

`(III) which may not include an attorney of the local educational agency unless the parent is accompanied by an attorney; and

`(IV) where the parents of the child discuss their complaint, and the facts that form the basis of the complaint, and the local educational agency is provided the opportunity to resolve the complaint,

unless the parents and the local educational agency agree in writing to waive such meeting, or agree to use the mediation process described in subsection (e).

`(ii) HEARING- If the local educational agency has not resolved the complaint to the satisfaction of the parents within 30 days of the receipt of the complaint, the due process hearing may occur, and all of the applicable timelines for a due process hearing under this part shall commence.

`(iii) WRITTEN SETTLEMENT AGREEMENT- In the case that a resolution is reached to resolve the complaint at a meeting described in clause (i), the parties shall execute a legally binding agreement that is--

`(I) signed by both the parent and a representative of the agency who has the authority to bind such agency; and

`(II) enforceable in any State court of competent jurisdiction or in a district court of the United States.

`(iv) REVIEW PERIOD- If the parties execute an agreement pursuant to clause (iii), a party may void such agreement within 3 business days of the agreement's execution.

IDEA 2004 Final Regulations

§300.510 Resolution process.

(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 under §300.511, the LEA must convene a meeting with the parent and the relevant member or members of the IEP 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 an 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.

(3) The meeting described in paragraph (a)(1) and (2) of this section need not be held if--

(i) The parent and the LEA agree in writing to waive the meeting; or

(ii) The parent and the LEA agree to use the mediation process described in §300.506.

(4) The parent and the LEA determine the relevant members of the IEP Team to attend the meeting.

(b) Resolution period. (1) 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.

(2) Except as provided in paragraph (c) of this section, the timeline for issuing a final decision under §300.515 begins at the expiration of this 30-day period.

(3) Except where the parties have jointly agreed to waive the resolution process or to use mediation, notwithstanding paragraphs (b)(1) and (2) of this section, the failure of the parent filing a due process complaint to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held.

(4) If the LEA is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made (and documented using the procedures in §300.322(d)), the LEA may, at the conclusion of the 30-day period, request that a hearing officer dismiss the parent's due process complaint.

(5) If the LEA fails to hold the resolution meeting specified in paragraph (a) of this section within 15 days of receiving notice of a parent's due process complaint or fails to participate in the resolution meeting, the parent may seek the intervention of a hearing officer to begin the due process hearing timeline.

(c) Adjustments to 30-day resolution period. The 45-day timeline for the due process hearing in §300.515(a) 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.

(d) Written settlement agreement. If a resolution to the dispute is reached at the meeting described in paragraphs (a)(1) and (2) of this section, the parties must execute a legally binding agreement that is--

(1) Signed by both the parent and a representative of the agency who has the authority to bind the agency; and

(2) Enforceable in any State court of competent jurisdiction or in a district court of the United States, or, by the SEA, if the State has other mechanisms or procedures that permit parties to seek enforcement of resolution agreements, pursuant to §300.537.

(e) Agreement review period. If the parties execute an agreement pursuant to paragraph (c) of this section, a party may void the agreement within 3 business days of the agreement's execution.

(Authority: 20 U.S.C. 1415(f)(1)(B))

SAMPLE FORMS

WAIVER OF RESOLUTION SESSION FOLLOWING RECEIPT OF DUE PROCESS HEARING REQUEST

_____ **SCHOOL DISTRICT**

[If you need this waiver in a different language or communicated in a different way, or have questions about this agreement, please contact _____ at _____.]

Within 15 days of receiving notice of a parents' request for a due process hearing, and prior to the beginning of a due process hearing, the school district must convene a meeting with the parents and the relevant member or members of the individualized education program (IEP) team who have specific knowledge of the facts identified in the hearing request. The meeting must include a representative of the school district who has decision-making authority on behalf of that district. The meeting may not include an attorney of the school district unless the parent is accompanied by an attorney. The purpose of the meeting is for the parents of the child to discuss their hearing request and the facts that form the basis of the hearing request, so that the school district has the opportunity to resolve the dispute that is the basis for the hearing request.

The district is not required to hold this meeting if the parents and the school district agree in writing to waive the meeting or agree to use the mediation process to try to resolve the issues included in the hearing request. If the parents and school district do not agree to waive the resolution session and the district has not resolved the due process complaint to the parent's satisfaction within 30 days of the receipt of the due process hearing request, the due process hearing must occur. An agreement to waive the resolution session must be in writing.

Agreement to use mediation process rather than resolution session:

I agree to waive the resolution session and use mediation to attempt to resolve the due process issues.			
Signature of parent/legal guardian or adult student	Date	Signature of school district representative	Date

Agreement to proceed directly to due process hearing:

I agree to waive the resolution session and want to proceed directly to the due process hearing.			
Signature of parent/legal guardian or adult student	Date	Signature of school district representative	Date

RESOLUTION SESSION PARTICIPATION

Names

Position

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Agreement: _____

The parties understand that this agreement is voluntary, legally binding, and enforceable in Wisconsin state court or in a district court of the U.S.

Agreement Reached

_____ Date: _____

Parent(s) or Adult Student _____ School Representative _____

Agreement Not Reached

_____ Date: _____

Parent(s) or Adult Student _____ School Representative _____