January 28, 2008

TO: Chief School Administrator
    Director of Special Education
    Administrator of a State Facility
    Administrator of a Charter School
    Administrator of an Approved Private School for the Disabled
    Administrator of a College-Operated Program
    Statewide Special Education Advisory Council
    Agencies or Organizations Concerned with Special Education

FROM: Roberta L. Wohle, Director
      Office of Special Education Programs

SUBJECT: Updates with Respect to Due Process Procedures

I am writing to clarify the procedures regarding the transmittal of parental requests for a due process hearing to the New Jersey Office of Administrative Law. As you are aware, upon receipt of a parental request for a due process hearing, the school district must, within 15 days, schedule and hold a resolution meeting unless the parties agree to use mediation in lieu of the resolution meeting or agree in writing to waive the entire resolution process and proceed directly to a hearing.

Pursuant to N.J.A.C. 6A:14-2.7(h)4, “[i]f a request for a due process hearing is not resolved to the satisfaction of the parents within 30 days of the receipt of the petition, the Office of Special Education Programs (OSEP) shall transmit the case to the Office of Administrative Law for a due process hearing.” This timeframe is 15 days for an expedited due process hearing. See N.J.A.C. 6A:14-2.7(h)5. A recent clarification from the United States Department of Education requires that all parental requests for a due process hearing be transmitted for hearing on day 31 (or day 16 for an expedited due process hearing) unless the parties are engaged in mediation activities in accordance with State and Federal regulations. Therefore, unless the parties have resolved their dispute through the resolution meeting or are engaged in ongoing mediation activities, the OSEP will transmit parental requests for a due process hearing on day 31.
In addition, I wish to advise you that, on January 13, 2008, Governor Jon S. Corzine signed legislation placing the burden of proof and production in all requests for a due process hearing, whether filed by the parent or the school district, on the school district. The legislation applies to all requests for a due process hearing received on or after January 13, 2008.

If you have any questions regarding these updates, please contact the Office of Special Education Programs at (609) 984-1286.

RW/CK/JW
c: Members, State Board of Education
   Commissioner Lucille E. Davy
   Willa Spicer
   John Hart
   Senior Staff
   Barbara Gantwerk
   County Superintendent
   County Supervisor of Child Study
   Office of Administrative Law
   LRC Managers and Consultants
   Receiving Schools
   Regional Day Schools
   Members, NJ LEE Group
   Garden State Coalition of Schools