



State of New Jersey
DEPARTMENT OF EDUCATION
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SHEILA Y. OLIVER
Lt. Governor

LAMONT O. REPOLLET, ED.D.
Commissioner

August 6, 2019

Ms. Laurie VanderPloeg, Director
Office of Special Education Programs
United States Department of Education
400 Maryland Ave. S.W.
Washington DC 20202-2600

Dear Ms. VanderPloeg:

I write to inform you of actions taken by the New Jersey Department of Education (NJDOE) in response to the onsite visit conducted by staff from your office on September 20 and 21, 2018. We received notification of the findings on May 6, 2019.

In response to the findings of noncompliance related to New Jersey's special education dispute resolution system, the NJDOE has updated its policies and procedures concerning the conduct of due process hearings. Through the issuance of broadcast messages, which are distributed statewide and posted on the NJDOE website, the NJDOE has notified local educational agencies (LEAs), Chief School Administrators, Administrative Law Judges (ALJs), and relevant stakeholders of the revised policies and procedures. A copy of each broadcast message is enclosed.

As part of the broadcast messages, the NJDOE has explained its revised stay-put policies and procedures; directed Administrative Law Judges (ALJs) to limit granting requests to extend the 45-day timeline to resolve due process hearings; required ALJs to submit data to the NJDOE on a monthly basis detailing information concerning due process hearings such as, the number of due process hearings conducted and resolved, and the number of extensions of the 45-day timeline requested, including the party seeking the extension of time and the reason for the request. The NJDOE also advised ALJs that granting requests for an extension of time during an expedited due process hearing is not permitted.

The NJDOE has informed local educational agencies (LEAs) that they will be required to submit documentation concerning resolution meetings to the NJDOE beginning September 1, 2019. The NJDOE has notified LEAs that failure to convene a resolution meeting or failure to provide the NJDOE proof that the parties agreed to waive the resolution meeting and/or agreed to participate in a mediation conference instead of a resolution meeting, will result in the NJDOE issuing a finding of noncompliance which must be corrected as soon as possible, but no later than within one year.

Additionally, the NJDOE has revised the Parental Rights in Special Education (PRISE) document to make clear that a student's right to stay put is ensured regardless of when the student's parent/guardian files a request for a due process hearing. The revised PRISE has been posted on the NJDOE's website.

Also, the Department and the OAL will implement an Independent Hearing Officer (IHO) pilot program during state fiscal year 2020 that will utilize contracted independent hearing officers (IHOs) to preside over special education due process hearings. The Department will issue a Request for Qualifications (RFQ) in order to contract with individuals who have demonstrated experience in special education, law, and/or dispute resolution. The contracted IHOs will supplement, not supplant, ALJs during the term of the pilot program. Participation in the pilot program will not constitute any waiver of any rights or protections afforded under federal and state laws, including the right to appeal a final decision in a due process hearing.

Finally, the NJDOE will assign an NJDOE designee to work directly with ALJs to ensure the scheduling of due process hearings remains in compliance with the timelines set forth in the Individuals with Disabilities Education Act (IDEA). The NJDOE designee will also ensure ALJs obtain ongoing and regular training and professional development in special education law and procedures, legal writing, and settlement negotiations. The NJDOE designee will work with ALJs to develop regulations governing the conduct of due process hearings to ensure compliance with the IDEA and relevant federal and state regulations. The NJDOE designee will also work with ALJs to ensure the collection and reporting of accurate dispute resolution data. The NJDOE is in the process of executing a revised Memorandum of Understanding (MOU) with the Office of Administrative Law that codifies the activities described above. A copy of the revised MOU will be provided to you once it has been executed.

Thank you for your attention to this matter. Please contact me should you have any questions or require additional information.

Sincerely,



Carolyn J. Marano
Assistant Commissioner
Division of Student Services

CJM/DR

Enclosures

c: Lamont O. Repollet, Ed.D., Commissioner of Education

The Honorable Lisa James Beavers, Acting Director, Office of Administrative Law

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