

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF EDUCATION

August 5, 2009

SUBJECT: 22 Pa. Code Chapters 14 and 711 (State Special Education Regulations) –
Stay-put During Mediation Process

TO: School District Superintendents
School District Special Education Administrators
Intermediate Unit Executive Directors
Intermediate Unit Special Education Directors
Charter School Chief Executive Officers

FROM: John J. Tommasini
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Bureau of Special Education

This communication discusses the relationship of the special education mediation process to the maintenance of the current educational placement of a child with a disability and encourages timely response to mediation requests.

On June 27, 2008, Chapter 711 was modified at Section 711.62(e) to provide as follows:

Except as provided in 34 CFR 300.533 (relating to placement during appeals), during the pendency of any mediation proceeding conducted in accordance with 34 CFR 300.506 (relating to mediation), unless the charter school or cyber charter school and the parents of the child agree otherwise, the child that is the subject of the mediation shall remain in the child's then current education placement until the mediation process is concluded.

On June 28, 2008, Chapter 14 was modified at Section 14.162(s) to provide as follows:

Except as provided in 34 CFR 300.533 (relating to placement during appeals), during the pendency of any mediation proceeding conducted in accordance with 34 CFR 300.506 (relating to mediation), unless the school entity or the parents of the child agree otherwise, the child that is the subject of the mediation shall remain in the current education placement until the mediation process is concluded.

These state regulations elevate mediation to the status of an administrative proceeding as referenced in 34 CFR 300.506 and require, in cases where stay-put is at issue, that pendency be maintained until the conclusion of the mediation process - in the same way that it must be maintained during the pendency of a due process hearing. If a parent has requested mediation within ten calendar days of receipt of a Notice of Recommended Educational Placement (NOREP) recommending a change in the child's current educational placement, a school entity, cyber charter school or charter school must continue to implement the current educational program for the student.

Sections 14.162 and 711.62 both provide for an exception to the stay-put requirement when a child has been placed in an interim alternative educational setting pending the decision of the hearing officer or until the expiration of a disciplinary placement - whichever occurs first - unless the parent and the State Education Agency (SEA) or Local Education Agency (LEA) agree otherwise. Therefore, like stay-put during a due process hearing, LEAs need not maintain a child's current education placement in the circumstances of disciplinary changes in placement outlined in 34 CFR 300.530 (c) and (g).

The Office for Dispute Resolution (ODR) processes all requests for mediation, initiates the mediation process, assigns mediators to assist the parties to resolve the dispute amicably and provides notice of the date upon which the mediation process concludes. For additional information about the mediation process, see www.odr-pa.org.

Pendency only extends to the current educational placement if both parties agree to mediation. If an LEA indicates that it does not wish to participate in mediation, ODR will confirm this in writing to both parties and verify the date upon which the mediation proceeding concludes. Unless the parents initiate another proceeding to which pendency attaches (i.e., a due process hearing) prior to the conclusion of the mediation process, the LEA must without any undue delay implement the placement described in the NOREP.

LEAs should respond quickly to ODR regarding their willingness to participate in parent-requested mediation because mediation is an effective - but voluntary process. LEAs are, however, under no obligation to submit a dispute to mediation. Nonetheless, mediation should not be used to deny or delay a parent's right to a hearing on the parent's due process complaint, or to deny any other rights afforded under the IDEA, see 34 CFR 200.505(b). A LEA's undue delay in notifying ODR of its decision to reject mediation is inconsistent with the regulatory intent supporting the LEA's obligation to implement an IEP within ten (10) school days, see 22 PA Code 14.131(a)(6) and 711.41(c).

If you have any questions, please contact the special education adviser assigned to your region.

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