**THE SETTLEMENT CONFERENCE**

**Scheduling**

A party seeking to schedule a settlement conference is advised to contact the opposing party to ascertain if that party is willing to participate in this voluntary process. If both parties agree to go forward, the partes should inform their assigned hearing officer that they are jointly seeking to participate in this process, and reach out via e-mail to Reece.Erlichman@mass.gov.

**Overview**

The settlement conference is an informal, voluntary, alternative dispute resolution process available to litigants only after a due process hearing request has been filed. It is designed to afford parties a final opportunity to resolve the matter through the BSEA without proceeding to a formal due process hearing.

The settlement conference provides an opportunity for an informed, neutral case assessment that will, in many cases, facilitate resolution and obviate the need for hearing. It is conducted in the context of an informal process over the course of one day. The goal of the settlement conference is not only to reach an agreement in principle, but further, to draft and execute a binding settlement agreement prior to the close of the conference, thus affording the parties efficiency and closure, as well as mitigation of costs. It is important to bear in mind that by their very nature, settlement agreements, which are legally binding contracts, typically entail general releases and specific waivers of legal rights and claims, as well as a significant amount of legal boilerplate

Three criteria must be met in order for parties to access the settlement conference process: a hearing request has already been filed in the matter; the parties voluntarily agree to participate in the settlement conference; and the hearing officer assigned to the matter endorses the process as appropriate given case presentation.

The requirement that a hearing request has been filed is rooted in the notion that in order to enable the person presiding over the settlement conference to offer a fully informed case assessment, the case must be “evolved”; that is, the settlement conference facilitator must be able to consider/review the gist of the evidence that would ultimately comprise the record were the case to go to hearing.

Second, participation in the process is voluntary-it is neither mandated by statute, regulation or rule. All parties must agree to participate, or the settlement conference does not go forward.

Third, since there are some disputes that are less amenable to resolution through the settlement conference process than others, the assigned hearing officer (who has typically reviewed the hearing request, response, and has conferenced the matter) is consulted as to the efficacy of using the process for that matter.

The methodology utilized in the settlement conference process is, at its core, case assessment, and the success of the process is therefore dependent in significant part on the expertise of the person presiding over the settlement conference. Thus, settlement conferences are conducted by knowledgeable, seasoned professionals, experienced in the area of special education law/litigation, who can provide informed, insightful, and neutral assessments.

**Process**

In order to provide such informed case assessment, the settlement conference facilitator requires that parties submit documents in advance of the conference for her (his) review. These documents should be limited to pleadings, recent evaluations, progress reports, recent IEP(s), evidence of any significant procedural violations, etc. The submission should give the settlement facilitator a thorough overview of the case the parties intend to present at hearing.

At the option of the parties, the settlement conference may either begin in separate sessions or in a brief joint session. During this initial session, each party has the opportunity, if they elect, to make a brief opening statement. Participants are then given an opportunity to present relevant information that is not included in their submissions (e.g., parents’ personal perspective), and/or to expand upon/clarify information contained in the documents. The settlement conference facilitator will likely ask questions based upon their review of the submissions. Unlike a hearing the session is not recorded and participants are not under oath or subject to cross-examination when making their presentations.

Once the joint session, if held, is completed, the settlement conference facilitator caucuses with each party, offers case analysis, and provides a candid assessment of the strengths /vulnerabilities of the respective positions. Note: such *ex parte* communication is permissible in the context of the settlement process, albeit wholly impermissible within the context of a due process hearing. Similarly, since financial considerations are often a catalyst to resolution, discussions about the financial implications of the case, as well as monetary offers, are permissible at a settlement conference, but not at a hearing. (At hearing, the financial implications of a program, placement or services may not be considered by the hearing officer.) Offers and counteroffers are proposed and discussed and, if consensus is reached, a binding settlement agreement is drafted and executed. Nothing that occurs at the settlement conference (including conversations, offers, written submissions, or the settlement agreement, if one is reached) is shared by the settlement conference facilitator with the assigned hearing officer, nor can it be raised at a hearing. If agreement is reached, the moving party simply submits a written withdrawal of the hearing request. In the event no agreement is reached, the parties proceed to hearing in the normal course.