

December 4, 2006

xxxxxxxxxxxxx
Superintendent
Union Public Schools
5656 S. 129th East Ave.
Tulsa, OK 74134-6715

Dear Superintendent xxxxxx;

In October, the Special Education Resolution Center sent out some information to you about hearing officer pay for conducting special education due process hearings. As you recall, hearing officer pay is poor and has caused a problem in keeping knowledgeable hearing officers. For example, the hearing officers are not currently paid for any time in which they manage a case to settlement. Therefore, most hearing officers perform their duties for free. Soon they tire of the activity and then remove themselves from the panel. Of the few cases that actually go to hearing, the officer is paid only \$200.00 per day - close to the hourly rate of the attorneys which practice before them. Because of no pay or a very low rate of pay, the hearing officers do not stay. Oklahoma's challenge is to determine a rate of pay that is sufficient to maintain a panel of knowledgeable, well-trained and experienced hearing officers while keeping the costs reasonable to school districts.

Oklahoma needs to develop and keep a panel of knowledgeable, well-trained and experienced hearing officers. Our Center is currently providing unprecedented training requirements. We are providing this training to prevent "loose canon" decisions. We are requiring the hearing officers to obtain certification through the National Association of Hearing Officials. For this certification, the officers must demonstrate quality training consisting of 52 hours in various facets of conducting an administrative hearing. The officers are also required to attend three days of mandatory training: one day of training on administrative law and two days of training in substantive special education law by a national experts.

One hearing officer recently calculated that, based on the current rate of pay and the time he had expended in a case, he had only earned approximately \$12.45 per hour!

One Superintendent related that if he needed dental work, he wouldn't go out and find a Dentist that would do the job for free. He would want a Dentist who knows what he's doing and he wouldn't expect that Dentist to do the job for free or next to nothing! He said that when he had a hearing officer making a decision that could potentially cost his district thousands of dollars, he don't want one that would do it for free or next to nothing. He wanted a well-trained and knowledgeable hearing officer that expected to be paid fair compensation for his expertise.

Your help is needed - by providing your opinion - as decisions are made on changing the rate of pay. You are one of 62 districts which was a party to a Due Process Request during the last 5 years. You, as a party to due process, faced the reality of needing a knowledgeable, well-trained and experienced officer that would make a decision that could greatly impact your school district. You know the importance of having a hearing officer that knows and understands the law.

Information for your consideration:

1. All new hearing officers hired by SERC are attorneys. This move is to meet the new requirements for hearing officers under IDEA 2004. All states, to our current knowledge, are moving toward using attorneys.
2. Attorney hearing officers are familiar with legal systems and are more prepared to manage the hearings in a way that reduces legal costs. For instance, a well trained attorney hearing officer will: 1) limit the testimony to only material facts, thus reducing the length of the hearing, 2) use case management skills to keep the case from unnecessarily dragging out, thus reducing unnecessary legal fees, 3) render a legal decision based on the law, preventing off the wall results that bind parties in the future.
3. In considering information on rates of pay, SERC is reviewing what other states pay hearing officers, mistakes other states made in setting hearing officer pay, what other state agencies pay for the services of hearing officers. SERC is also reviewing what other state agencies currently pay hearing officers in areas of law with similar legal complexity.
4. SERC suggests paying the hearing officer an hourly amount for managing the pre-hearing time, but setting the maximum time allowed (within a set number of hours) for an average case. If the case was complex, the hearing officer could request some additional hours, within a set limit. The pre-hearing time consists of legal research to determine the rule of law (important to limit testimony to material facts), conducting pre-hearing conferences (important to keep the process moving in an efficient manner) and issuing orders, subpoenas, and other legal process.
5. SERC suggests paying the hearing officer an hourly amount for conducting the hearing, not exceed a pre-determined amount per day. Using this method, the hearing officer would bill for only a portion of a day actually in hearing, but no more than a pre-determined amount per day.
6. SERC suggests paying the hearing officer for rendering and writing the decision an amount that exceeds \$250.00.

Attached is a survey. Please complete the survey and return by FAX as soon as possible, but no later than Wednesday, December 13, 2006.

XXXXXXX
Program Manager

