



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

JUN - 4 2002

Dr. Norena A. Hale
Director, Division of Special Education
Minnesota Department of Children, Families
and Learning
1500 Highway 36 West
Roseville, Minnesota 55113-4266

Dear Dr. Hale:

Minnesota's 30-day limit for State court review of IDEA claims appears to be inconsistent with applicable law of the U.S. Court of Appeals for the Eighth Circuit. Minnesota submitted a 30-day time limit for filing a court action as part of its eligibility documents for funding under Part B of the Individuals with Disabilities Education Act (IDEA). Specifically, Minnesota's policies and procedures on file with the Secretary of Education provide that "State judicial review must be in accordance with chapter 14." Minn. Stat. 125A.09, subd. 10 and Minnesota's Due Process/Parent Involvement Manual, page 8-22. Under Minnesota Statute Chapter 14, "[a] petition ... for judicial review ... must be filed ... not more than 30 days after the party receives the final decision and order of the agency." Minn. Stat. §14.63. Thus, under current Minnesota law, parties who wish to file an IDEA action in court are subject to a 30-day time limit.

The Eighth Circuit has specifically held that a 30-day limit for judicial review of IDEA claims is inconsistent with the policies of the IDEA. See, *Birmingham v. Omaha School Dist. et al*, 220 F.3d 850 (8th Cir. 2000). In *Birmingham*, the Eighth Circuit specifically rejected application of a 30-day limit under Arkansas' Administrative Procedures Act (APA) to judicial review of IDEA claims because it would conflict with IDEA's two primary policies: (1) to provide disabled children with a free appropriate public education and to encourage parents and school officials to resolve disputes cooperatively "so that the child is not needlessly deprived of the education mandated by law."

"Thirty days does not allow parents sufficient time to work with school officials to resolve educational disputes. Useful discourse that may resolve such disputes is foreclosed because parents are forced to immediately litigate." 220 F.3d at 855. "[T]hirty days ... is insufficient for an IDEA claim because review is de novo and may expand beyond the record." *Id.* The *Birmingham* court further noted the realities of parents of a child with a disability. A "truncated limitations period does not take into account the realities of raising a disabled child ..., which leaves parents limited time to prepare a lawsuit." In rejecting the Arkansas APA 30-day limit, the Eighth Circuit applied a three-year statute of limitations applicable to Arkansas general personal injury claims. "A three year statute of limitations encourages parents to work with school officials to resolve disputes over the disabled child's education. It also allows parents

time to prepare a federal lawsuit, and account for the time constraints faced by parents of disabled children.” 220 F.3d at 856.

If you believe that *Birmingham* Eighth Circuit decision is not applicable to Minnesota law, please provide for our review a detailed explanation no later than 10 days from the date of this letter. Otherwise, please revise the following documents and resubmit them to OSEP for approval. Specifically, delete from Minn. Stat. 125A.09, subd. 10 and Minnesota’s Due Process/Parent Involvement Manual, page 8-22 any references to Minn. Chapter 14 and further delete from any other Minnesota Part B eligibility documents any requirement that would impose a 30-day limit on filing a civil action under the IDEA. Kindly also confirm in writing to OSEP the methods that Minnesota will use to provide notice of the change in the time limit to school districts and parents. You should provide us within 10 days the timeline for accomplishing each of these steps.

If you have any questions, please contact Dr. JoLeta Reynolds at 202-205-5507.

Sincerely,

A handwritten signature in cursive script that reads "Stephanie S. Lee".

Stephanie S. Lee

Director

Office of Special Education Programs



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JUN - 4 2002

Dr. Melody Bounds
Bureau Director
Program Improvement and Outreach
Mississippi State Department of Education
P.O. Box 771
Jackson, Mississippi 39205-0771

Dear Dr. Bounds:

Mississippi's 30-day limit for filing a civil action under the IDEA in court appears to be inconsistent with applicable law of the U.S. Court of Appeals for the Fifth Circuit. Mississippi submitted policies and procedures as part of its eligibility documents for funding under Part B of the Individuals with Disabilities Education Act (IDEA) that sets forth on page VII-16 that hearing officer decisions may be appealed "in any state court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy within thirty (30) days from the date of the decision of the impartial due process hearing officer."

The Fifth Circuit has specifically held that a 30-day limit for judicial review of IDEA claims is inconsistent with the policies of the IDEA. *See, Skokin*, 723 F.2d 432 (5th Cir. 1984). In *Skokin*, the Fifth Circuit specifically rejected application of a 30-day limit under Texas' Administrative Procedures Act (APA) to judicial review of IDEA claims because "a thirty day period is inconsistent with the purposes of the [IDEA]." 723 F.2d at 438. The *Skokin* court cited among IDEA's primary policies: to provide disabled children with a free appropriate public education and to encourage parental involvement in their children's educational decisions.

The *Skokin* court noted that "[f]orcing parents to decide whether to appeal their complaint within thirty days of the state agency's determination would be inconsistent with that goal [of preventing inappropriate placements of children with disabilities due to faulty assessments of a child's needs]." 723 F.2d at 437. "A short limitations period is contrary to the Act's goal of parental involvement. Thirty days is not enough time for parents to determine whether to pursue judicial review of their complaint. A decision to jump from an administrative process to federal court may involve obtaining or changing counsel. n3 [citing IDEA right to counsel provisions] Parents may want to conduct further testing of their child to better evaluate the agency's decision. ... In addition, because a child's welfare is an emotional issue, parents may need time to reflect before choosing a course of action." *Id.*

If you believe that *Skokin* is not applicable, please provide for our review a detailed explanation no later than 10 days from the date of this letter. Otherwise, please delete from page VII-16 and any other Mississippi's Part B eligibility documents all references to the applicability of the 30-day limit to all civil actions under the IDEA in Missouri (whether in Federal or State court). We understand that Mississippi has proposed legislation pending that may revise the limitation period. If so, please submit the revised limitation period and confirm in writing to OSEP the methods that Mississippi will use to provide notice of this time limit change to school districts and parents. You should provide us within 10 days the timeline for accomplishing each of these steps.

If you have any questions, please contact Dr. JoLeta Reynolds at 202-205-5507.

Sincerely,

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Stephanie S. Lee

Director

Office of Special Education Programs



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JUN - 4 2002

Ms. Melodie Friedebach
Coordinator of Special Education Services
Division of Special Education
Missouri Department of Elementary & Secondary Education
P.O. Box 480
Jefferson City, Missouri 65102-0580

Dear Ms. Friedebach:

Missouri's 30-day limit for filing a civil action under the IDEA in State court appears to be inconsistent with applicable law of the U.S. Court of Appeals for the Eighth Circuit. Missouri submitted policies and procedures as part of its eligibility documents for funding under Part B of the Individuals with Disabilities Education Act (IDEA) that sets forth on page 30 that hearing officer decisions may be appealed to "the state courts within thirty (30) days as provided in Chapter 536, RSMo. ...". Missouri Statute §536.110.1 specifically provides for a 30-day time limit for judicial review of IDEA claims.

The Eighth Circuit has specifically held that a 30-day limit for judicial review of IDEA claims is inconsistent with the policies of the IDEA. *See, Birmingham v. Omaha School Dist. et al*, 220 F.3d 850 (8th Cir. 2000). In *Birmingham*, the Eighth Circuit specifically rejected application of a 30-day limit under Arkansas' Administrative Procedures Act (APA) to judicial review of IDEA claims because it would conflict with IDEA's two primary policies: (1) to provide disabled children with a free appropriate public education and to encourage parents and school officials to resolve disputes cooperatively "so that the child is not needlessly deprived of the education mandated by law."

"Thirty days does not allow parents sufficient time to work with school officials to resolve educational disputes. Useful discourse that may resolve such disputes is foreclosed because parents are forced to immediately litigate." 220 F.3d at 855.

"[T]hirty days ... is insufficient for an IDEA claim because review is de novo and may expand beyond the record." *Id.* The *Birmingham* court further noted the realities of parents of a child with a disability. A "truncated limitations period does not take into account the realities of raising a disabled child. ... , which leaves parents limited time to prepare a lawsuit." In rejecting the Arkansas APA 30-day limit, the Eighth Circuit applied a three-year statute of limitations applicable to Arkansas general personal injury claims. "A three year statute of limitations encourages parents to work with school officials to resolve disputes over the disabled child's education. It also allows parents time to prepare a federal lawsuit, and account for the time constraints faced by parents of disabled children." 220 F.3d at 856.

If you believe that *Birmingham* is not applicable, please provide for our review a detailed explanation no later than 10 days from the date of this letter. Otherwise, please delete from Missouri's Part B eligibility documents any references to the applicability of Mo. Chapter 536's 30-day limit to civil actions under the IDEA in Missouri and further revise any Part B documents that impose such a limit. Kindly resubmit these documents and also confirm in writing to OSEP the methods that Missouri will use to provide notice of this time limit change to school districts and parents. You should provide us within 10 days the timeline for accomplishing each of these steps.

If you have any questions, please contact Dr. JoLeta Reynolds at 202-205-5507.

Sincerely,

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Stephanie S. Lee

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JUN - 4 2002

Mr. Gary M. Sherman
Administrator
Special Populations Office
Nebraska Department of Education
301 Centennial Mall South
P. O. Box 94987
Lincoln, Nebraska 68509-4987

Dear Mr. Sherman:

Nebraska's 30-day time period for filing in State court an appeal of a due process hearing officer's decision under the IDEA appears inconsistent with applicable law of the U.S. Court of Appeals for the Eighth Circuit. Nebraska submitted Nebraska Statute §79-1167(2) and Nebraska Rule 55,009.02 as part of its eligibility documents for funding under Part B of the Individuals with Disabilities Education Act (IDEA). These two provisions of Nebraska law provide that parties who wish to file an IDEA action in court "must file a petition . . . within thirty days after service of the final decision and order . . ." Neb. Stat. §79-1167(2) & Rule 55,009.02.

The Eighth Circuit has specifically held that a 30-day limit for judicial review of IDEA claims is inconsistent with the policies of the IDEA. *See, Birmingham v. Omaha School Dist. et al*, 220 F.3d 850 (8th Cir. 2000). In *Birmingham*, the Eighth Circuit specifically rejected application of a 30-day limit under Arkansas' Administrative Procedures Act (APA) to judicial review of IDEA claims because it would conflict with IDEA's two primary policies: (1) to provide disabled children with a free appropriate public education and (2) to encourage parents and school officials to resolve disputes cooperatively "so that the child is not needlessly deprived of the education mandated by law."

"Thirty days does not allow parents sufficient time to work with school officials to resolve educational disputes. Useful discourse that may resolve such disputes is foreclosed because parents are forced to immediately litigate." 220 F.3d at 855. "[T]hirty days . . . is insufficient for an IDEA claim because review is de novo and may expand beyond the record." *Id.* The *Birmingham* court further noted the realities of parents of a child with a disability. A "truncated limitations period does not take into account the realities of raising a disabled child . . . , which leaves parents limited time to prepare a lawsuit." In rejecting the Arkansas APA 30-day limit, the Eighth Circuit applied a three-year statute of limitations applicable to Arkansas general personal injury claims. "A three year statute of limitations encourages parents to work with school officials to resolve disputes over the disabled child's education. It also allows parents time to prepare a federal lawsuit, and account for the time constraints faced by parents of disabled children." 220 F.3d at 856.

If you believe that *Birmingham* does not apply to Neb. Stat. §79-1167(2) & Rule 55,009.02, please provide for our review a detailed explanation no later than 10 days from the date of this letter. Otherwise, please revise Neb. Stat. §79-1167(2) & Rule 55,009.02 to delete the applicability of a 30-day limit to filing civil actions under the IDEA in Nebraska. Kindly resubmit these Nebraska Part B eligibility documents to OSEP for approval and also confirm in writing to OSEP the methods that Nebraska will use to provide notice of the change in Nebraska's time limit to school districts and parents. You should provide us within 10 days the timeline for accomplishing each of these steps.

If you have any questions, please contact Dr. JoLeta Reynolds at 202-205-5507.

Sincerely,

A handwritten signature in cursive script that reads "Stephanie S. Lee".

Stephanie S. Lee

Director

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