UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES
THE ASSISTANT SECRETARY

OCT 2 0 2010

Honorable Beth H. Colleye
Acting State Superintendent
District of Columbia
Office of the State Superintendent of Education
810 First Street, NE
9th Floor
Washington, D.C. 20002

Dear Ms. Colleye:

This letter responds to electronic mail (email) correspondence of December 9, 2009, from Carmela Edmunds, Attorney Advisor, Office of the Attorney General, Office of the State Superintendent of Education (OSSE), District of Columbia (D.C.). In that correspondence, Ms. Edmunds requests additional guidance on motions for reconsideration. We apologize for the delay in responding to Ms. Edmunds' request.

In a February 6, 2009 letter, the Office of Special Education Programs (OSEP) informed OSSE that several sections of its Special Education Student Hearing Office Due Process Hearing Standard Operating Procedures (SOPs), including section 1005 that allows parties to file a motion for reconsideration after a final due process decision is issued, were inconsistent with the Individuals with Disabilities Education Act (IDEA). In a May 15, 2009 letter, OSSE described the actions it was taking to address OSEP's concerns, including revising its SOPs to be consistent with the IDEA, and asked for further time to review OSEP's request that the section on motions for reconsideration be eliminated. Pending this review, OSSE instructed all hearing officers to deny such motions. According to Ms. Edmunds' December 9, 2009 email, OSSE proposed to delete section 1005 of the SOPs and plaintiffs' counsel in the Blackman-Jones case objected to the deletion. Ms. Edmunds provided to OSEP the plaintiffs' letter of objection and a research memorandum that the plaintiffs contend supports their position that motions for reconsideration are permissible under the IDEA. Staff in various offices of the Department carefully reviewed the information provided by the plaintiffs' counsel in this matter.

It remains the Department's position that section 1005 of the SOPs is inconsistent with the finality and timeline requirements in the IDEA, the Part B regulations at 34 CFR Part 300, and our comments noted below in the Analysis of Comments and Changes section of the March 12, 1999 Part B regulations. D.C. has a one tier due process system; a party does not have the right to appeal a decision to the State educational agency (SEA). The regulations at 34 CFR §300.515(a) require that a final decision in a due process hearing must be reached and mailed to the parties not later than 45 days after the expiration of the 30-day resolution period under 34 CFR §300.510(b), or the adjusted time periods described in 34 CFR §300.510(c). A hearing officer may grant specific extensions of time beyond the periods set out in 34 CFR §300.515(a) at the request of either party. See 34 CFR §300.515(c). Under section 615(i)(1)(A) of the IDEA statute and 34 CFR §300.514(a), a decision made in a due process hearing conducted by the SEA is final, except that any party may appeal the decision by bringing a civil action in any State

court of competent jurisdiction or in a district court of the United States, under the provisions in section 615(i)(2)(A) of the IDEA and 34 CFR §300.516.

In the Analysis of Comments and Changes section of the March 12, 1999 IDEA, Part B regulations, in response to a comment on motions for reconsideration, the Department stated that "a reconsideration process may not delay or deny parents' right to a decision within the time periods specified for hearings and appeals." 64 Fed. Reg. 12614 (March 12, 1999). In the context of the Analysis of Comments and Changes on the 1999 regulations, appeals are referring to appeals to the SEA if the State establishes a two tier system. There were no changes in the IDEA Improvement Act of 2004 or its implementing regulations that would affect this interpretation.

Once a final decision has been issued, no motion for reconsideration is permissible. However, a State can allow motions for reconsideration prior to issuing a final decision, but the final decision must be issued within the 45-day timeline or a properly extended timeline. Therefore, based on the provisions noted above, OSSE must revise the SOPs to either: (1) eliminate the provision on motions for reconsideration; or (2) ensure that motions for reconsideration are filed and decided prior to issuance of the final decision and within the 45-day timeline or a properly extended timeline. Within 60 days of the date of this letter, OSSE must report to OSEP whether the State intends to eliminate the provision on motions for reconsideration or ensure that motions for reconsideration are filed and decided prior to issuance of the final decision and within the 45-day timeline or a properly extended timeline, and provide a reasonable timeline for completing the required revisions.

Based on our review of information provided by plaintiffs' counsel in the Blackman-Jones case, it appears that some States may have permitted motions for reconsideration after a final decision has been issued. Therefore, consistent with the information in this letter, we intend to provide guidance advising all States that motions for reconsideration after the issuance of a final decision are not permissible.

We appreciate your immediate attention to this important matter. If you have any questions or require further information, please do not hesitate to contact Lisa Pagano at 202-245-7413 or by email at Lisa.Pagano@ed.gov.

Sincerely,

Alexa Posny

Alexa Posny, Ph.D.

cc: Tameria Lewis
Carmela Edmunds