

December 9, 2015

Perry A. Zirkel, Ph.D. JD
University Professor of Education and Law
Lehigh University
Mountaintop Campus
111 Research Drive
Bethlehem, Pennsylvania 18015-4794

Dear Dr. Zirkel:

This is in response to your requests for guidance regarding the statute of limitations for filing due process hearing requests under Part B of the Individuals with Disabilities Education Act (IDEA). Specifically, you ask, for States that do not have an explicit time limitation for requesting a due process hearing, whether the statute of limitations for filing a due process hearing request is four, instead of two, years, in light of the two-year period specified in both 34 CFR §§ 300.507(a)(2) and 300.511(e).

The regulatory provisions at 34 CFR §§ 300.507(a)(2) and 300.511(e) mirror the statutory provisions at sections 615(b)(6)(B) and 615(f)(3)(C), respectively, of the IDEA. In the Analysis of Comments and Changes in the 2006 IDEA Part B regulations, the Department published the following:

Comment: Some commenters requested that the regulations clarify whether the statute of limitations in section 615(b)(6)(B) of the Act is the same statute of limitations in section 615(f)(3)(C) of the Act. The commenters stated that the Act and regulations are confusing because the statute of limitations is mentioned twice and implies that the timeline for filing a complaint and filing a request for a due process hearing are different.

Discussion: The statute of limitations in section 615(b)(6)(B) of the Act is the same as the statute of limitations in section 615(f)(3)(C) of the Act. Because we are following the structure of the Act, we have included this language in [34 CFR] §§ 300.507(a)(2) and 300.511(e).

Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children With Disabilities, 71 Fed. Reg. 46,540, 46,706 (Aug. 14, 2006).

The United States Court of Appeals for the Third Circuit recently addressed this question in *G.L. v. Ligonier Valley School District Authority*, No. 14-1387, 802 F.3d 601 (3d Cir. 2015). In that litigation, the Court requested that the Department submit an *amicus curiae* letter brief concerning the relationship between the two statutory provisions. In response to the Court's request, the Department submitted a letter (enclosed), providing the 2006 Comment excerpted above and stating that the Department will continue to review its prior statement regarding these

provisions to determine the extent to which further clarification is necessary. On September 22, 2015, the Court issued its decision (enclosed), holding that both provisions reflect the same two-year deadline for filing a due process complaint after the date plaintiffs knew or should have known about the alleged violations (the “KOSHK date”). The Court also held that neither provision limits remedies to injuries that occurred within two years before the KOSHK date, and that, if parents timely file a complaint and liability is proven, the entire period of the violation should be remedied. In light of the Court’s decision, the Department is continuing to deliberate to determine whether further guidance is necessary.

Based on section 607(e) of the IDEA, we are informing you that our response is provided as informal guidance and is not legally binding, but represents an interpretation by the U.S. Department of Education of the IDEA in the context of the specific facts presented.

Thank you for bringing this matter to our attention. If you have questions, please do not hesitate to contact Lisa Pagano at 202-245-7413 or by email at Lisa.Pagano@ed.gov.

Sincerely,

/s/

Melody Musgrove, Ed.D.
Director
Office of Special Education Programs

Enclosures