

December 13, 2015

Colleen A. Snyder
Ruderman & Knox LLP
1300 National Drive, Suite 120
Sacramento, California 95834

Dear Ms. Snyder:

This is in response to your July 6, 2015 letter regarding the application of the expedited due process hearing requirements under 34 CFR § 300.532 of the regulations implementing Part B of the Individuals with Disabilities Education Act (IDEA). Specifically, you ask whether an expedited due process hearing is mandatory when a due process complaint is submitted pursuant to 34 CFR § 300.532(a), or if a parent or local educational agency (LEA) can request that a hearing pursuant to 34 CFR § 300.532(a) not be subject to the expedited due process timeline.

An expedited due process hearing under 34 CFR § 300.532 is a hearing involving a due process complaint regarding a disciplinary matter, which is subject to shorter timelines¹ than a due process hearing conducted pursuant to 34 CFR §§ 300.507-300.516. Under 34 CFR § 300.532(a), the parent of a child with a disability who disagrees with any decision regarding placement under 34 CFR §§ 300.530 and 300.531, or the manifestation determination under 34 CFR § 300.530(e), or an LEA that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, may appeal the decision by requesting a hearing.

If a parent or LEA files a due process complaint to request a due process hearing under one of the disciplinary matters mentioned above, the State educational agency (SEA) or LEA is responsible for arranging an expedited due process hearing, which must occur within 20 school days of the date that the due process complaint requesting the hearing is filed.² The hearing officer must make a determination within 10 school days after the hearing. *See* 34 CFR §300.532(c)(2); *See also* Question E-1 of the Questions and Answers on IDEA Part B Dispute Resolution Procedures (Q&A)³. The purpose of expediting the due process hearing related to a disciplinary decision is to ensure that the matter is resolved promptly and that the child's educational program is not adversely affected by undue delays. The shortened timelines for

¹ Under 34 CFR § 300.532(c) the timeline for an expedited due process hearing is determined by school days. A school day is defined under 34 CFR § 300.11(c)(1) as any day, including a partial day, that children are in attendance at school for instructional purposes. School day has the same meaning for all children in school, including children with and without disabilities. 34 CFR § 300.11(c)(2). *See* Letter to Cox dated June 22, 2012.

² In a one-tier system, the SEA conducts the expedited due process hearing. In a two-tier system, the public agency directly responsible for the education of the child conducts the expedited due process hearing.

³ Questions and Answers on IDEA Part B Dispute Resolution Procedures can be found at: <http://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/accombinedosersdisputeresolutionqafinalmemo-7-23-13.pdf>.

conducting expedited due process hearings in disciplinary situations should enable hearing officers to make prompt decisions about disciplinary matters while ensuring that all of the due process protections in 34 CFR §§ 300.510-300.514 are maintained. There is no provision in the Part B regulations that would give a hearing officer conducting an expedited due process hearing the authority to extend the timeline for issuing this determination at the request of a party to the expedited due process hearing. Under 34 CFR § 300.532(c)(4), a State may establish different procedural rules for expedited due process hearings than it has established for other due process hearings, but except for the timelines in 34 CFR § 300.532(c)(3), those rules must be consistent with 34 CFR §§ 300.510-300.514. *See* Question E-7 of the Q&A.

In reviewing the exhibits attached to your letter, we note that, in some cases, a due process hearing may include both a disciplinary and non-disciplinary matter. The IDEA and its implementing regulations do not specifically address this situation. Under the IDEA, with the exception of matters raised under 34 CFR §§ 300.530 and 300.531, hearing officers have discretion in how they manage cases before them. Therefore, in this circumstance, a hearing officer could decide that it is prudent to bifurcate the hearing, thus allowing for an expedited hearing on the discipline and removal issues, and a separate hearing on any other issues.

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.

If you have any further questions, please do not hesitate to contact Jennifer Wolfsheimer, of my staff, at 202-245-6090 or by email at Jennifer.Wolfsheimer@ed.gov.

Sincerely,

/s/

Melody Musgrove, Ed.D.

Director

Office of Special Education Programs

cc: California State Director