



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

June 2, 2014

Mark W. Voigt
Law Office of Mark W. Voigt
Plymouth Meeting Executive Campus
Suite 400
600 West Germantown Pike
Plymouth Meeting, Pennsylvania 19462

Dear Mr. Voigt:

This is in response to your letters of August 28, 2011, September 2, 2011, and September 8, 2011 to the Office of Special Education Programs (OSEP) in the Office of Special Education and Rehabilitative Services (OSERS), U.S. Department of Education (Department). Your letters concern the Pennsylvania Department of Education's (PDE's) policy of allowing local educational agencies (LEAs) 150 days to implement due process hearing decisions under Part B of the Individuals with Disabilities Education Act (IDEA or Part B). I apologize for the delayed response.

You included with your letters an August 19, 2011 decision letter from the PDE's Bureau of Special Education (BSE), which outlines PDE's policy as set out in its Office of Dispute Resolution document entitled "Appeal Timelines and Instructions for Completing Assurance Forms." Under Section I of the policy, either party may appeal a final due process decision to state court within 30 calendar days and to Federal Court within 90 calendar days. Under Section III of the policy, if a hearing officer agrees with the child's parents that a change of placement is appropriate, the child is afforded that placement during the pendency of any administrative or judicial proceeding, consistent with the requirements in 34 CFR §300.518(d), and the child must be afforded the ordered placement within 30 days of the hearing officer decision. Under Section IV of the policy, an LEA is not obligated to implement the decision until the expiration of the applicable appeal period. The LEA has 60 calendar days after the expiration of the applicable appeal period to implement the decision and file the required assurance with the State verifying implementation of the order. As we read the policy, the timeline for implementing a due process decision in Section IV of the policy does not apply if a hearing officer agrees with the child's parents that a change of placement is appropriate. You ask OSEP to provide an opinion as to whether PDE's policy is consistent with the IDEA, its implementing regulations, and prior OSEP guidance.

The IDEA contains certain timelines that apply to due process decisions and appeals. In Pennsylvania, due process hearings are conducted by the State educational agency (SEA), in this case PDE. The IDEA provides that the hearing decision must be issued within 45 days of the expiration of the 30-day resolution period described in 34 CFR §300.510(b) or an adjusted resolution period described in 34 CFR §300.510(c), unless the hearing officer grants a request for a specific extension at the request of either party. 34 CFR §300.515(a) and (c). The hearing decision is final, unless a party aggrieved by that decision appeals that decision by bringing a civil action in a State court of competent jurisdiction or a district court of the United States. 34 CFR §300.514(a) and 300.516. As noted above, in Pennsylvania, a party may appeal a final due process decision to state court within 30 calendar days and to Federal Court within 90 calendar days.

While the IDEA does not specifically address State-established timelines for implementation of final administrative decisions, we would expect that all final due process decisions are implemented within a reasonable period of time and without undue delay so that a child with a disability receives the services determined necessary to provide that child with the free appropriate public education to which he or she is entitled, but has been denied, under the IDEA. These determinations are highly factual in nature; therefore, we believe that what constitutes a “reasonable period of time” depends in part on the circumstances surrounding the decision.

If an LEA determines shortly after the beginning of the time period to bring an appeal that it is not going to appeal a final due process decision, the LEA should not delay implementation of the decision until the expiration of the 90 day appeal period. To the contrary, that LEA should implement the decision as soon as possible, absent a specific reason to do otherwise. If the LEA does not make a final decision about whether to appeal a decision until the end of the 90 day appeal period, the LEA should not delay implementation of the decision for an additional 60 days beyond the 90 days. Depending on the type of relief ordered, particularly where the relief itself is time-sensitive, a shorter time frame may be reasonable. For example, if an LEA is required to pay tuition reimbursement or provide compensatory education services that are commonly available, the LEA should implement the decision in less than 60 days. On the other hand, in unusual circumstances where implementing the hearing officer’s decision requires the LEA to undertake significant action, e.g., training an entire school staff on how to meet the needs of the child, extensive renovations, or purchasing particularly unique equipment that is not readily available, the LEA may need additional time, up to 60 days in Pennsylvania, to implement the decision. As noted above, meeting the special education and related services needs of the child without undue delay is paramount and should drive the timeliest implementation of the hearing officer’s decision.

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 additional questions, please do not hesitate to contact Rebecca Walawender, at 202-245-7399 or by email at Rebecca.Walawender@ed.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Melody Musgrove". The signature is fluid and cursive, with a long horizontal line extending to the right.

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

cc: State Director of Special Education