



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

August 23, 2018

Devin Fletcher  
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Dear Mr. Fletcher:

This letter responds to your correspondence addressed to Cheryl Broady, Customer Service Specialist, United States Department of Education (Department), Office of Special Education Programs (OSEP). In your letter, you requested guidance on how expedited due process hearings should be scheduled when there are fewer than 20 school days left in the school year, and whether it would be consistent with the Individuals with Disabilities Education Act (IDEA) to hold an expedited due process hearing when there are less than 20 school days left in the school year. We regret the delay in responding.

We note that section 607(d) of IDEA prohibits the Secretary from issuing policy letters or other statements that establish a rule that is required for compliance with, and eligibility under, IDEA without following the rulemaking requirements of section 553 of the Administrative Procedure Act. Therefore, based on the requirements of IDEA section 607(e), this response is provided as informal guidance and is not legally binding. This response represents an interpretation by the Department of the requirements of IDEA in the context of the specific facts presented, and does not establish a policy or rule that would apply in all circumstances.

Your letter indicates that this matter was the subject of litigation, and we emphasize that we express no view on the facts and circumstances giving rise to that litigation or the merits of the underlying dispute. While it would be consistent with IDEA for an expedited due process hearing to occur within less than 20 school days from the date that the due process complaint was filed, there is no IDEA requirement that the hearing occur within less than 20 school days. When a parent or a local educational agency (LEA) files a due process complaint to request an expedited due process hearing on the matters described in 20 U.S.C. 1415(k)(3) and 34 CFR §300.532(a), the State educational agency (SEA) or LEA is responsible for arranging the expedited due process hearing, which must occur within 20 school days of the date that the due process complaint is filed. The hearing officer in an expedited due process hearing must make a determination within 10 school days after the hearing concludes. 20 U.S.C. §1415(k)(4)(B) and 34 CFR §300.532(c)(2) and (4). Further, a hearing officer may not grant an extension of the

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expedited hearing timelines. See Q&A E-7 of the July 23, 2013 *Questions and Answers on IDEA Part B Dispute Resolution Procedures*.<sup>1</sup>

OSEP has addressed the question of how to apply the timeline requirements for expedited due process hearings when the due process complaint is filed when school is not in session.

**Question E-5:** How must SEAs and LEAs apply the timeline requirements for expedited due process hearings if the due process complaint is filed when school is not in session?

**Answer:** When a due process complaint requesting an expedited due process hearing is filed during the summer or when school is not otherwise in session, the SEA or LEA responsible for arranging the expedited due process hearing is not required to count those days in calculating the expedited due process hearing timelines. A school day has the same meaning for all children in school, including children with and without disabilities. 34 CFR §300.11(c)(2). Therefore, any day that children without disabilities are not in school is not counted as a school day, and is not considered in calculating the expedited due process hearing timelines. For example, a day on which a public agency only provides extended school year services to children with disabilities and does not operate summer school programs for all children cannot be counted as a “school day.” 71 FR 46552 (August 14, 2006). In contrast, if a due process complaint requesting a hearing is filed under 34 CFR §§ 300.507-300.516, when school is not in session, the SEA is required to meet the 30-day resolution period and 45-day hearing timelines in 34 CFR §§300.510 and 300.515(a).

We believe the same analysis applies whether the due process complaint requesting an expedited due process hearing is filed with less than 20 school days remaining in the school year or if the request is filed during the summer or other times when school is not in session. Given the tight timeline constraints for expedited due process hearings, the SEA or LEA must ensure that the hearing is completed no later than the 20<sup>th</sup> school day from when the expedited due process complaint is filed and that the hearing officer’s determination is made no later than the 10<sup>th</sup> school day after the hearing concludes – even if the complaint was filed during the previous school year or during the summer, and the due date falls during the following school year .

If you have any further questions, please do not hesitate to contact Lisa Pagano of my staff at 202-245-7413 or by email at [Lisa.Pagano@ed.gov](mailto:Lisa.Pagano@ed.gov).

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<sup>1</sup> This document is available at: <https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/acccombinedosersdisputeresolutionqafinalmemo-7-23-13.pdf>

Sincerely,

/s/

Ruth E. Ryder  
Acting Director  
Office of Special Education Programs