



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

DIRECTOR

OSEP Policy Letter 22-04

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Perry Zirkel, PhD
University Professor Emeritus of Education and Law
Lehigh University
perry.zirkel@lehigh.edu

Dear Dr. Zirkel:

This correspondence responds to your multiple inquiries to the U.S. Department of Education (Department), Office of Special Education Programs (OSEP), regarding implementation of the State complaint, due process complaint, and due process hearing procedures required under the Individuals with Disabilities Education Act (IDEA). We have consolidated the questions you raised, and our responses are provided below. We regret the delay in responding.

We note that Section 607(d) of the IDEA prohibits the Secretary of the Department 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. It 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. Other than statutory and regulatory requirements included in the document, the contents of this guidance do not have the force and effect of law and are not meant to bind the public. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies. Further, please note that OSEP responds to these matters, generally, and not in the context of any specific due process complaint or State complaint that may be pending or resolved.

Due Process Complaints and Due Process Hearings

Question 1: Does a parent's failure to provide a proposed resolution of the problem in their due process complaint as required by 34 C.F.R. § 300.508(b)(6), restrict the authority of a hearing officer to order prospective relief (such as ordering an individualized education program (IEP) Team meeting to correct identified deficiencies in the child's IEP) and/or retrospective relief (such as requiring the agency to provide compensatory services or reimburse the parent for expenses they incurred)?

OSEP Response: A due process complaint must be deemed sufficient unless the party receiving the due process complaint notifies the hearing officer and the other party in writing within 15

days of receiving it, that the receiving party believes the due process complaint does not meet the requirements in 34 C.F.R. § 300.508(b). See 34 C.F.R. § 300.508(d). Therefore, if a party does not include a proposed resolution to the problem in their due process complaint to the extent known and available to the party at the time, as required under 34 C.F.R. § 300.508(b)(6), the other party may ask the hearing officer to determine the sufficiency of that complaint. If a party does not raise a sufficiency claim within 15 days of receiving the due process complaint, the due process complaint is deemed sufficient, and a due process hearing may occur.

We understand your question to involve those situations in which either no challenge was made to the sufficiency of the due process complaint, or a hearing officer determined the due process complaint was sufficient, notwithstanding the filing party's failure to provide a proposed resolution to the problem. In some instances, a parent may not be aware of the possible ways to remedy the issue that forms the basis of their due process complaint. Since 34 C.F.R. § 300.508(b)(6) requires the filing party to propose a resolution to the complaint only to the extent known and available to the party at the time the complaint is filed, the failure to include a proposed resolution to the problem would not automatically render a due process complaint insufficient. In addition, consistent with IDEA Section 615(c)(2)(D), the final decision regarding the sufficiency of a due process complaint is left to the discretion of the hearing officer. Analysis of Comments and Changes accompanying the 2006 final IDEA Part B regulations, 71 Fed. Reg. 46540, 46699 (Aug. 14, 2006).

OSEP believes that one primary purpose of including the “proposed resolution” in a due process complaint is to assist in the resolution process.¹ Moreover, the inclusion or omission of a proposed resolution should not be read to create a conflict with, or limitation upon, an impartial hearing officer's authority and ability to formulate an appropriate equitable remedy.

Question 2: What is the outer limit for the number of calendar days for an expedited hearing from the date of filing to the date of the hearing officer's decision?

OSEP Response: The timelines for holding a due process hearing on an expedited due process complaint and for issuing a decision in the matter are measured in school days. Whether a day is considered a school day for the purposes of calculating the expedited due process hearing timeline is determined according to the definition in 34 C.F.R. § 300.11(c). School day means 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.

A hearing on an expedited due process complaint must occur within 20 school days of the date the due process complaint is filed, and the hearing officer's determination must be made within 10 school days after the hearing. 34 C.F.R § 300.532(c)(2). The 10 school-day timeline for issuing the decision commences at the conclusion of the hearing. See 34 C.F.R § 300.532(c)(2).

¹ See S. Rep. No. 105-17, 25 (May 9, 1997); H.R. Rep. No. 105-95, 105 (May 13, 1997) (“The Committee believes that the addition of this provision will facilitate an early opportunity for schools and parents to develop a common frame of reference about problems and potential problems that may remove the need to proceed to due process and instead foster a partnership to resolve problems.”).

School district calendars vary a great deal and are affected by factors such as whether a school: (1) operates summer school programs for all children; (2) recognizes certain days as holidays that require closure of the school for students; (3) conducts staff in-services and professional development conferences that result in closure of the school for students; (4) closes due to inclement weather; or (5) allows use of school building facilities for elections and other community functions that require closure of the school for students. School district calendars vary widely, and there are many variables that may affect whether a day is a “school day.”² To the extent that you are asking the Department to calculate the maximum number of calendar days between the date an expedited due process complaint is filed and the date the hearing officer must issue a decision, this number will vary, and the Department declines to speculate in this way.

In your correspondence to OSEP, you indicate that the timeline for issuing a final decision in a non-expedited due process hearing is “relatively clear [i.e.,] 30 (resolution period) + 45 (post-resolution period) - 75 calendar days.” We want to clarify some of the possible variations for these components of the timeline. Under IDEA and its implementing regulations, the 30-day resolution period may be adjusted if: (1) both parties agree in writing to waive the resolution meeting; (2) after either the mediation or resolution meeting starts but before the end of the 30-day period, the parties agree in writing that no agreement is possible; or (3) if both parties agree in writing to continue the mediation at the end of the 30-day resolution period, but later, the parent or public agency withdraws from the mediation process. 34 C.F.R. § 300.510(c). Thus, the resolution period could be shorter or longer than 30 days. Also, a hearing officer may grant specific extensions of the 45-day hearing timeline at the request of either party. 34 C.F.R. § 300.515(c). For these reasons, the timeline for issuing a final decision in a non-expedited due process hearing may be shorter or longer than 75 calendar days after receipt of the due process complaint. Thus, it is also not appropriate to speculate on the maximum number of calendar days in which a final decision must be issued in a non-expedited due process hearing.

Question 3: You state in your correspondence to OSEP that some States, especially those that opt to use State administrative law judges to adjudicate IDEA due process complaints, engage in practices that dismiss a due process complaint and/or issue summary judgment on the matter without holding a hearing. You ask whether such practices (other than when a hearing officer rules that a due process complaint is insufficient) violate the parties’ right to a hearing under IDEA and/or arguably Fourteenth Amendment procedural due process rights.

OSEP Response: Please note that OSEP’s response to your inquiry is limited to the hearing rights afforded to parties under IDEA. 20 U.S.C. §§ 1415(f)(1)(A), 1415(f)(2), 1415(f)(3)(A)-(D), and 1415(h).

Whenever a due process complaint is received under 34 C.F.R. §§ 300.507 or 300.532, the parents or the local educational agency involved in the dispute must have an opportunity for an impartial due process hearing, consistent with the procedures in 34 C.F.R. §§ 300.507, 300.508,

² For more information on how the expedited due process hearing timeline is calculated, see OSEP’s [Questions and Answers on IDEA Part B Dispute Resolution Procedures](#) (see, in particular, Question E-5) and OSEP’s [Letter to Fletcher](#) (August 23, 2018).

and 300.510. 34 C.F.R. § 300.511(a). Among the rights IDEA affords parties to any hearing conducted pursuant to §§ 300.507 through 300.513 or §§ 300.530 through 300.534, or an appeal conducted pursuant to § 300.514, is the right to present evidence and confront, cross-examine, and compel the attendance of witnesses. 34 C.F.R. § 300.512(a)(2).

IDEA does not address procedures for dismissal of due process hearing requests outside of the context of the sufficiency of the complaint. In other words, the only provision in IDEA or its implementing regulations that contemplates summary dismissal is when the due process complaint is insufficient. To the extent any summary proceedings in a hearing on a due process complaint - other than a sufficiency determination - limit, or conflict with, either party's rights, including the right to present evidence and confront, cross-examine, and compel the attendance of witnesses, we believe such proceedings can be used only when both parties consent to use the summary process (e.g., cross-motions for summary judgment).

Resolution of IDEA State Complaints

Question 4: When resolving a State complaint filed under IDEA, must the State educational agency's (SEA's) written decision on alleged violations take into consideration consistency with (1) State guidance documents; and (2) applicable case law? Specifically, you ask whether the requirements in 34 C.F.R. § 300.153(b)(1) extend to State guidance documents; and whether the requirements in 34 C.F.R. § 300.152(a)(5) include case law as applicable standards for any conclusions of law contained in State complaint decisions?

OSEP Response: It will depend. We interpret the term "guidance" to include restatements of the requirements of IDEA, its implementing regulations, and related State law, policies, and procedures; but also, to include interpretations and suggested or best practices and procedures. Under 34 C.F.R. § 300.152(a)(4) and (a)(5), the SEA must review all relevant information and make an independent determination as to whether the public agency is violating a requirement of IDEA Part B and issue a written decision that addresses each allegation in the complaint and contains findings of fact and conclusions and the reasons for the SEA's final decision.

One or more State guidance documents may be relevant if they are intended to address the IDEA requirements at issue, or a State-imposed mandate needed to implement that IDEA requirement. For example, if the State issues guidance that sets out specific procedures that must be followed when responding to a parent's request for an initial evaluation (e.g., timelines for seeking a parent's consent), it would be appropriate for the SEA to determine whether the public agency followed those procedures. The SEA also should ensure that it makes clear the purpose of any guidance document that it issues, including any mandates related to proper implementation of Part B of IDEA.

The IDEA Part B regulations do not specifically address whether and to what extent case law must be reviewed and considered as part of an SEA's resolution of a State complaint. However, there may be times when the SEA must consider a public agency's compliance with a binding court ruling or consent decree. For example, a court may set Statewide standards for implementing an IDEA requirement (e.g., factors that must be considered when determining whether a child with a disability is eligible for extended school year services, how compensatory services are determined and awarded to a child with a disability) that may not yet be reflected in

a State's rules and procedures. In these circumstances, and to the extent not inconsistent with the Court's ruling, the SEA would be required to examine whether the public agency complied with the standard established under binding case law or consent decree.

Finally, we wish to acknowledge the correspondence you sent notifying OSEP of certain States' policies and procedures that appear to be inconsistent with IDEA requirements. You reported that some States inappropriately: (1) extend the timeline for expedited due process complaints; (2) excuse the respondent from submitting the written response required under 34 C.F.R. § 300.508(f); (3) require the use of the State's model form to file State complaints and/or due process complaints; (4) permit parties to extend hearing timelines, themselves without the hearing officer's agreement; and (5) allow districts to withhold reimbursement for past expenses ordered by a hearing officer. In a July 20, 2021, email to you, Dr. Gregory Corr, Director of the Monitoring and State Improvement Planning Division, stated that OSEP staff will investigate the procedures you outlined in your email and require any corrective actions deemed appropriate. In addition, as OSEP implements its Differentiated Monitoring and Support activities, we intend to continue reviewing and, where appropriate, holding States accountable for complying with IDEA's dispute resolution requirements. Finally, OSEP has initiated technical assistance to all States regarding expectations and requirements for the appropriate implementation of these important provisions.

We trust the information provided in this letter is responsive to your inquiries.

Sincerely,

/s/

Valerie C. Williams