



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

May 1, 2008

Mr. James Gerl, Esq.
Scotti and Gerl, Attorneys at Law
216 South Jefferson Street
Lewisburg, West Virginia 24901

Dear Mr. Gerl:

This is in response to your January 24, 2008 letter regarding the requirements for expedited due process hearings conducted in accordance with 34 CFR §300.532 of the regulations for Part B of the Individuals with Disabilities Education Act (Part B). Your letter asks the following question:

For expedited due process hearings, does the calculation of the number of days within which the hearing must be held begin after the resolution period?

Section 300.532(a) provides that a parent of a child with a disability who disagrees with any decision regarding placement under §§300.530 and 300.531, or the manifestation determination under §300.530(e), or a local educational agency (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 the circumstances set out in §300.532(a), 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 the complaint requesting the hearing is filed*. 34 CFR §300.532(c)(2) (emphasis added). The hearing officer must make a determination within 10 school days after the hearing. Id. Although this hearing must be conducted on an expedited basis, it is an impartial due process hearing subject to the requirements of 34 CFR §§300.507 and 300.508(a) through (c) and §§300.510 through 300.514, except as provided in §300.532(c)(2) through (4).

The resolution meeting must occur within seven days of receiving notice of the due process complaint unless the parents and LEA agree in writing to waive the resolution meeting, or agree to use the mediation process described in 34 CFR §300.506. 34 CFR §300.532(c)(3) and (i). Under 34 CFR §300.532(c)(3)(ii), the due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of the receipt of the due process complaint. Thus, there is a 15-day resolution period from the date the parent's due process complaint requesting a due process hearing under 34 CFR §300.532(a) is filed, and the time period for resolution is measured in terms of calendar days, not school days. The regulation at 34 CFR §300.11(a) specifies that under Part B, day means calendar day, unless otherwise indicated as business day or school day. Because the due process hearing must occur within 20 school days from the date that the parent's due process complaint under 34 CFR §300.532(a) requesting a due process hearing is filed, the regulations are clear that the resolution period is a part of, and not separate from, the expedited due process hearing timeline. The shortened

timelines for conducting expedited due process hearings in disciplinary situations should enable hearing officers to make prompt decisions about disciplinary matters while ensuring all of the due process protections in 34 CFR §§300.510 through 300.514 are maintained.

Given the shortened timelines for expedited due process hearings on due process complaints filed under 34 CFR §300.532(a), you also express a concern about how the parties can meet the requirement at 34 CFR §300.512(b) to disclose additional information, including evaluations, and recommendations to all parties at least five business days before the hearing begins. In the Notice of Proposed Rulemaking to implement changes made to IDEA by the Individuals with Disabilities Education Improvement Act of 2004, 70 FR 35782 (Jun. 21, 2005), the Department proposed that this time period should be reduced from 5 business days to 2 business days. Based on public comments asserting that this proposed change would not give the parties enough time to share information and would diminish protections for children with disabilities and their parents embodied in current law, the Department removed the proposed change. Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities, 71 FR 46540, 46725-26 (Aug. 14, 2006). Because the 15-day resolution period concludes well before the 20-school-day period within which the hearing must occur, we believe that the parties will have enough time to meet this requirement before the hearing begins. This is because 15 calendar days would usually be the equivalent of 11 school days.

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.

We hope this information is helpful to you. If you have further questions, please do not hesitate to contact Kimberly Mitchell at 202-245-7453 or Dr. Deborah Morrow at 202-245-7456 of my staff.

Sincerely,



William W. Knudsen
Acting Director
Office of Special Education
Programs

cc: Lynn Boyer