



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

October 19, 2000

Winona W. Zimmerlin  
Attorney at Law  
2 Congress Street  
Hartford, Connecticut 06114-1024  
Dear Ms. Zimmerlin:

Your February 7, 2000 letter to Judith Heumann, Assistant Secretary for the Office of Special Education and Rehabilitative Services (OSERS), was referred to this' Office of Special Education Programs (OSEP) for response. You inquired about Connecticut's statutory provisions that apply to the conduct of due process hearings under the Individuals with Disabilities Education Act (IDEA), which is codified at 20 U.S.C. *w et seq.*

You asked whether the following three provisions of the Connecticut statute, codified at Connecticut General Statute w (1999), are consistent with the IDEA: (1) a two-year statute of limitations on requesting a due process hearing that is triggered from the latter of (a) the school district's action or (b) its notice to the appropriate party of the procedural safeguards under the IDEA (including the limitation period); (2) a prohibition on introducing issues at a hearing that were not previously raised at a planning and placement team (PPT) meeting; and (3) the ability of a hearing officer to comment on the conduct of the proceedings. We address each of these issues separately below.

1. Statute of Limitations Applicable to IDEA Due Process Requests

You asked three questions about Connecticut's statute of limitations:

- (a) Whether the two-year period applied to a request for a due process hearing is consistent with the IDEA;
- (b) When does the limitation period begin to run; and
- (c) Can the two year limitation period be applied (as you indicated it is) to bar the admission of otherwise relevant evidence in hearings?

The Connecticut statute specifically states:

A party shall have two years to request a [due process] hearing from the time the board of education proposed or refused to initiate or change the identification, evaluation or educational placement or the provision of a free appropriate public education placement to such child or pupil provided, if such parent, guardian, pupil or surrogate parent is not given notice of the procedural safeguards, in accordance with regulations adopted by the State Board of Education, including notice of the limitations contained in this section, such two-year limitation shall be calculated from the time notice of the safeguards is properly given.

Connecticut General Statute w 10-76h(a)(3) (1999).

a. Two Year Period for Requesting a Due Process Hearing May Be Consistent with the IDEA

Regarding the first issue, the IDEA does not include a statute of limitations for requesting a due process hearing for IDEA claims. In three previous OSEP letters, *Letter to Raskin, OSEP 1991*, *Letter to Pawlisch, OSEP 1997*, and *Letter to Erickson, OSEP 2000*, we have commented on State statute of limitations specifically enacted to apply to due process hearing requests for all IDEA claims. Copies of these letters are enclosed for your reference. While we have indicated that a limitation period as short as sixty days for requesting a due process hearing is inconsistent with the IDEA (*see, Letter to Raskin, OSEP 1991*, and *Letter to Ericson, OSEP 2000*), we have also indicated that one year may not be automatically precluded by the IDEA (*see, Letter to Pawlisch, OSEP 1997*). Federal courts may apply a longer limitation period in a specific case. As we noted in the *Letter to Pawlisch, OSEP 1997*, a State statute of limitations may not treat Federal IDEA claims more stringently than comparable State claims. This rationale would also apply to Connecticut's statutory limitation period.

Thus, Connecticut's two-year statute of limitations for requesting a due process hearing for IDEA claims may be consistent with the IDEA.

b. Limitation Period Runs When Plaintiff Knows of Claim

You asked when Connecticut's limitation period begins to run. The Connecticut statute expressly provides that it runs from "the time the board of education proposed or refused to initiate or change the identification, evaluation, or educational placement or the provision of a free appropriate education placement." Connecticut General 10-76h(a)(3) (1999). However, this provision further provides that if a parent, guardian, pupil or surrogate parent had not been provided notice of the procedural safeguards under the IDEA, including notice of the limitation period that specifically applies to IDEA claims, the two year period does not commence until notice of the safeguards is provided to the appropriate party.

You then inquired about specific claims, including cases of inaction by the district, tuition reimbursement claims, and compensatory education claims. While the IDEA is silent with respect to a limitation period, generally, IDEA claims begin to accrue when a plaintiff knows or should have known of his or her claim under the IDEA. Application of this general rule as stated is the type of fact-finding and analysis conducted by courts and hearing officers.

c. Evidentiary Limitations May Be Inconsistent with IDEA if Otherwise Relevant or Probative Evidence is Routinely Excluded

Your final inquiry about the limitation statute relates more to your observations of its application to exclude evidence in IDEA hearings, than to the language of the statute itself or its validity. You stated that the two year limitation period “has been used by hearing officers...to prohibit introduction of evidence regarding the child’s educational program which was in place more than two years prior to the date of the hearing request.” You noted in particular the obstacle this provision has presented in barring claims for private placements and compensatory education.

The language of the statute does not appear to require this interpretation.<sup>1</sup> If the Connecticut statute was interpreted to automatically bar such evidence, we would view such an automatic evidentiary prohibition as contrary to the purposes and policies of due process proceedings under the IDEA because relevant evidence might not be appropriately considered. For example, the IDEA mandates that a child with a disability be reevaluated at least every three years. See 20 U.S.C. §1415(a)(2). Reevaluations are often probative on the issue of a child’s educational development and progress. If a hearing officer barred relevant evidence (including testimony and documents regarding a prior evaluation), this is a matter that may be raised through the State complaint process (described at 34 CFR §§300.660 - 300.662) and/or through appeals of the due process hearing result including any court proceedings.

2. Requirement of Prior Notice at PPT Meeting is Inconsistent with IDEA

The Connecticut statute provides that “no issue may be raised at such [due process] hearing unless it was raised at a planning and placement team [PPT] meeting for such child or pupil...” Connecticut General Statute §10-76h(a)(1). You expressed concern about this provision and noted that many parents are not represented by counsel at PPT meetings. There is a comparable provision for school districts in the Connecticut statute.

This provision impermissibly imposes additional prior notice requirements on parties. The IDEA identifies with great specificity the circumstances under which a parent or a school district is required to provide prior notice. Parents are obligated to provide advance notice to school districts in certain instances to maximize their ability to receive reimbursement for placing their child in a private school. See 20 U.S.C. §§1412(a)(10)(C)(iii). However, these notice provisions enable a hearing officer to limit the amount of the reimbursement in certain instances and do not

<sup>1</sup> The Connecticut statute specifically provides that relevant evidence and testimony shall be heard Conn. Gen. Stat. w167 10-76h(c) (2) and (3) (1999).

preclude parents from proceeding with a due process hearing for failing to provide the requisite notice. For school districts, the major prior written notice provisions are set forth at 20 U.S.C. w167 (c) and (d). The due process hearing right is not otherwise limited by the IDEA other than those notice provisions expressly contained in the IDEA. The State's imposition of any additional notice requirements on either party (in a manner that restricts the issues that may be heard) is inconsistent with the IDEA. Furthermore, its application would bar any review of school district actions if a district refused to conduct a PPT meeting.

3. Ability of Hearing Officer to Comment on Attorney Conduct if Relevant

The Connecticut statute also contains a provision that the "hearing officer may include in his decision a comment on the conduct of the proceedings." Connecticut General Statute §10-76h(d)(1) (1999). You expressed concern that this provision has a "chilling effect" on parents' attorneys in their decision to file for due process as it may be used to limit a parent's right to request reimbursement for attorneys' fees even if that parent prevails in the underlying action.

The relevant provisions regarding attorneys' fees under the IDEA are contained at 20 U.S.C. §1415(i)(3)(b) through (G) and 34 CFR §300.513. These provisions generally relate either to the reasonableness of attorneys' fees (as specifically defined in the statute) and the implications of an offer of judgment. To the extent the Connecticut provision allows comments on these relevant issues and thus, consideration by a reviewing court as to the issue of attorneys' fees, the Connecticut provision is not precluded by the IDEA. If in its application and interpretation, this Connecticut provision is intended to create a standard for attorneys' fees that a court may award under the IDEA that is different than the IDEA's express standards, the provision would be inconsistent with the IDEA. Additionally, if the hearing officer's comments may be impermissible if the comments negated the a party's rights to an impartial due process hearing as set forth in 20 U.S.C. §1415(f) and to an impartial hearing officer under 34 CFR §300.508.

Under 20 U.S.C. §§1415(i)(3)(F) and (G), a court may reduce fees if it finds that the parent unreasonably protracted the proceedings, if the fees exceed the prevailing hourly rate for comparable attorneys in the community, or that the time spent was excessive considering the nature of the proceeding. Courts have reduced fees under these reasonableness provisions. Under 20 U.S.C. §§1415(i)(3)(D) and (E), a court must withhold an award of attorneys' fees if an offer of judgment was made as statutorily defined (i.e., if the parent rejected a settlement offer on the substantive dispute without substantial justification and then failed in the proceedings to obtain relief more favorable than the offer).

Under the Connecticut statute, it appears that an attorney still maintains an opportunity in court to address, if necessary, relevant comments that may be made by a hearing officer. A party is able to introduce additional evidence at the court hearing as such evidence relates to a particular claim. Additionally, in determining attorneys' fee awards, a court, while required to give due weight to an administrative record, must still make independent findings and cannot rely solely on the comments of a hearing officer. Thus, the hearing officer's ability to comment does not

appear invalid on its face provided that it is linked to a relevant issue and does not preclude a party's ability to address such comments in court or in any application for attorneys' fees. As you may know, we will be reviewing Connecticut's statutory and related provisions this year as part of Connecticut's submission of eligibility documentation under IDEA Part B. By copy of this letter to Mr. George Dowaliby, State Director of Special Education in Connecticut, we are informing the Connecticut State Education Agency of this response and our intention to review these provisions particularly.

If you have further questions, please contact Dr. JoLeta Reynolds of my office at (202) 205-5507 or me.

Sincerely,

A handwritten signature in black ink, appearing to read "Kenneth R. Warlick". The signature is fluid and cursive, with the first name "Kenneth" and last name "Warlick" being the most legible parts.

Kenneth Warlick  
Director  
Office of Special Education Programs

Enclosures

cc: Ms. Samara Goodman (OSEP, Part B Contact)

Mr. George Dowaliby (State Director of Special Education, Connecticut)