



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

JUN 4 - 2002

Mr. Gary M. Sherman  
Administrator  
Special Populations Office  
Nebraska Department of Education  
301 Centennial Mall South  
P. O. Box 94987  
Lincoln, Nebraska 68509-4987

Dear Mr. Sherman:

Nebraska's 30-day time period for filing in State court an appeal of a due process hearing officer's decision under the IDEA appears inconsistent with applicable law of the U.S. Court of Appeals for the Eighth Circuit. Nebraska submitted Nebraska Statute §79-1167(2) and Nebraska Rule 55,009.02 as part of its eligibility documents for funding under Part B of the Individuals with Disabilities Education Act (IDEA). These two provisions of Nebraska law provide that parties who wish to file an IDEA action in court "must file a petition . . . within thirty days after service of the final decision and order . . . ." Neb. Stat. §79-1167(2) & Rule 55,009.02.

The Eighth Circuit has specifically held that a 30-day limit for judicial review of IDEA claims is inconsistent with the policies of the IDEA. *See, Birmingham v. Omaha School Dist. et al*, 220 F.3d 850 (8<sup>th</sup> Cir. 2000). In *Birmingham*, the Eighth Circuit specifically rejected application of a 30-day limit under Arkansas' Administrative Procedures Act (APA) to judicial review of IDEA claims because it would conflict with IDEA's two primary policies: (1) to provide disabled children with a free appropriate public education and (2) to encourage parents and school officials to resolve disputes cooperatively "so that the child is not needlessly deprived of the education mandated by law."

"Thirty days does not allow parents sufficient time to work with school officials to resolve educational disputes. Useful discourse that may resolve such disputes is foreclosed because parents are forced to immediately litigate." 220 F.3d at 855. "[T]hirty days . . . is insufficient for an IDEA claim because review is de novo and may expand beyond the record." *Id.* The *Birmingham* court further noted the realities of parents of a child with a disability. A "truncated limitations period does not take into account the realities of raising a disabled child . . . , which leaves parents limited time to prepare a lawsuit." In rejecting the Arkansas APA 30-day limit, the Eighth Circuit applied a three-year statute of limitations applicable to Arkansas general personal injury claims. "A three year statute of limitations encourages parents to work with school officials to resolve disputes over the disabled child's education. It also allows parents time to prepare a federal lawsuit, and account for the time constraints faced by parents of disabled children." 220 F.3d at 856.

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If you believe that *Birmingham* does not apply to Neb. Stat. §79-1167(2) & Rule 55,009.02, please provide for our review a detailed explanation no later than 10 days from the date of this letter. Otherwise, please revise Neb. Stat. §79-1167(2) & Rule 55,009.02 to delete the applicability of a 30-day limit to filing civil actions under the IDEA in Nebraska. Kindly resubmit these Nebraska Part B eligibility documents to OSEP for approval and also confirm in writing to OSEP the methods that Nebraska will use to provide notice of the change in Nebraska's time limit to school districts and parents. You should provide us within 10 days the timeline for accomplishing each of these steps.

If you have any questions, please contact Dr. JoLeta Reynolds at 202-205-5507.

Sincerely,

A handwritten signature in black ink that reads "Stephanie S. Lee". The signature is written in a cursive style with a large, prominent "S" at the beginning.

Stephanie S. Lee  
Director  
Office of Special Education Programs