



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

JUN - 4 2002

Dr. Melody Bounds
Bureau Director
Program Improvement and Outreach
Mississippi State Department of Education
P.O. Box 771
Jackson, Mississippi 39205-0771

Dear Dr. Bounds:

Mississippi's 30-day limit for filing a civil action under the IDEA in court appears to be inconsistent with applicable law of the U.S. Court of Appeals for the Fifth Circuit. Mississippi submitted policies and procedures as part of its eligibility documents for funding under Part B of the Individuals with Disabilities Education Act (IDEA) that sets forth on page VII-16 that hearing officer decisions may be appealed "in any state court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy within thirty (30) days from the date of the decision of the impartial due process hearing officer."

The Fifth Circuit has specifically held that a 30-day limit for judicial review of IDEA claims is inconsistent with the policies of the IDEA. *See, Skokin*, 723 F.2d 432 (5th Cir. 1984). In *Skokin*, the Fifth Circuit specifically rejected application of a 30-day limit under Texas' Administrative Procedures Act (APA) to judicial review of IDEA claims because "a thirty day period is inconsistent with the purposes of the [IDEA]." 723 F.2d at 438. The *Skokin* court cited among IDEA's primary policies: to provide disabled children with a free appropriate public education and to encourage parental involvement in their children's educational decisions.

The *Skokin* court noted that "[f]orcing parents to decide whether to appeal their complaint within thirty days of the state agency's determination would be inconsistent with that goal [of preventing inappropriate placements of children with disabilities due to faulty assessments of a child's needs]." 723 F.2d at 437. "A short limitations period is contrary to the Act's goal of parental involvement. Thirty days is not enough time for parents to determine whether to pursue judicial review of their complaint. A decision to jump from an administrative process to federal court may involve obtaining or changing counsel. n3 [citing IDEA right to counsel provisions] Parents may want to conduct further testing of their child to better evaluate the agency's decision. ... In addition, because a child's welfare is an emotional issue, parents may need time to reflect before choosing a course of action." *Id.*

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If you believe that *Skokin* is not applicable, please provide for our review a detailed explanation no later than 10 days from the date of this letter. Otherwise, please delete from page VII-16 and any other Mississippi's Part B eligibility documents all references to the applicability of the 30-day limit to all civil actions under the IDEA in Missouri (whether in Federal or State court). We understand that Mississippi has proposed legislation pending that may revise the limitation period. If so, please submit the revised limitation period and confirm in writing to OSEP the methods that Mississippi will use to provide notice of this time limit change 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