



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

November 10, 2010

David Anderson, General Counsel
Texas Education Agency
1701 North Congress Avenue
Austin, Texas 78701-1494

Dear Mr. Anderson:

This is in response to your August 19, 2010 letter requesting guidance on whether a State educational agency (SEA) may adopt a regulation that takes into account, for purposes of the resolution period timeline, a local educational agency's (LEA's) winter break. You state that you are asking because you have learned that LEAs are encountering difficulty in timely convening resolution sessions when parents file due process hearing complaints shortly before or during winter breaks. You further clarify that in Texas, winter breaks typically extend between two to three weeks. You also ask whether the SEA could delay notifying an LEA that a due process complaint has been filed with the SEA until the LEA reopens after winter break.

Under section 615(f)(1)(B) of the Individuals with Disabilities Education Act (IDEA) and 34 CFR §300.510(a), within 15 days of receiving notice of the parent's due process complaint, and prior to the initiation of a due process hearing under 34 CFR §300.511, the LEA must convene a meeting with the parent and the relevant member or members of the individualized education program (IEP) Team who have specific knowledge of the facts identified in the due process complaint. Under 34 CFR §300.11(a), "day" means calendar day unless otherwise indicated as business day or school day. Absent an agreement under 34 CFR §300.510(a)(3) not to hold the meeting because the parent and the LEA agree in writing to waive the meeting, or the parent and the LEA agree to use the mediation process described in 34 CFR §300.506, the LEA is obligated to schedule and hold the resolution meeting within 15 days of receiving the notice of the parent's due process complaint. Therefore, it would be inconsistent with IDEA and its implementing regulations for the State to adopt a regulation that allows suspension of the timeline for convening a resolution session when the SEA receives a complaint shortly before or during an LEA's winter break.

You state in your letter that under the State's current special education regulations, the 15-day period for convening a resolution session begins when the SEA notifies the LEA that the SEA has received the parent's due process complaint. The SEA's practice has been to send the LEA notice of the complaint within one to two business days. While IDEA and its implementing regulations do not specify a timeline for notifying the LEA that a due process complaint has been

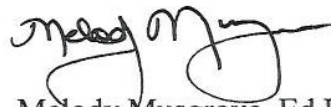
filed, the filing of a due process complaint sets in motion a series of required timelines, notices, and actions designed to ensure the timely resolution of disputes regarding the education of children with disabilities. An SEA cannot delay commencement of the resolution timeline by waiting until the LEA reopens after winter break to notify the LEA that a due process complaint has been filed. This would delay not only the 15-day timeline for convening the resolution session in 34 CFR §300.510(a), but also the 45-day timeline for issuing a final due process decision in 34 CFR §300.515(a), which begins after the expiration of the 30-day resolution period in 34 CFR §300.510(b) or the day after one of the events described in 34 CFR §300.510(c). We note that the provision in 34 CFR §300.517(c)(4), permitting a court to reduce the amount of attorneys' fees under section 615 of the IDEA under certain circumstances, does not apply in any action or proceeding if the court finds that the State or local agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of section 615 of the IDEA. 34 CFR §300.517(c)(5).

Under 34 CFR §300.510(b)(5), if an LEA fails to hold a resolution meeting within the required timelines or fails to participate in a resolution meeting, the parent may seek the intervention of a hearing officer to begin the due process hearing timeline. If a parent fails to participate in a resolution meeting, an LEA must continue to make reasonable efforts throughout the remainder of the 30-day resolution period to convince the parent to participate in a resolution meeting. The regulations at 34 CFR §300.510(b)(4) permit an LEA, at the conclusion of the 30-day resolution period, to request that a hearing officer dismiss the complaint when an LEA is unable to obtain the participation of a parent in a resolution meeting despite making reasonable efforts to do so and has documented its efforts using the procedures in 34 CFR §300.322(d).

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.

If you have questions, please do not hesitate to contact Dr. Deborah Morrow at 202-245-7456 or by email at Deborah.Morrow@ed.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'Melody Musgrove', with a stylized flourish at the end.

Melody Musgrove, Ed.D.

Director
Office of Special Education Programs

cc: Kathy Clayton