



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

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Perry Zirkel, Ph.D., JD
University Professor of Education and Law
Lehigh University
Mountaintop Campus
111 Research Drive
Bethlehem, Pennsylvania 18015-4794

Dear Dr. Zirkel:

This letter responds to your electronic mail (email) correspondence to Melody Musgrove, former Director, Office of Special Education Programs (OSEP), U.S. Department of Education (Department), and subsequently forwarded to me for response. In your emails, you asked several questions about the implementation of certain provisions of Part B of the Individuals with Disabilities Education Act (IDEA). We regret the delay in responding. Our answers to the specific questions raised in your correspondence are provided below.

Question: Is an expedited due process hearing mandatory when a due process complaint is submitted pursuant to 34 CFR §300.532(a), or may a parent or local educational agency (LEA) request that a hearing pursuant to 34 CFR §300.532(a) not be subject to the expedited due process timeline? May the parties waive, via mutual agreement, the “opportunity” for an expedited hearing in a case that fits within the subject matter of 34 CFR §300.532(c)?

Answer: OSEP stated in Letter to Snyder (December 13, 2015), that there is no provision in the IDEA Part B regulations that would give a hearing officer conducting an expedited due process hearing the authority to extend the timeline for issuing this determination at the request of a party to the expedited due process hearing. Under 34 CFR §300.532(c)(4), a State may establish different procedural rules for expedited due process hearings than it has established for other due process hearings, but except for the timelines in 34 CFR §300.532(c)(3), those rules must be consistent with 34 CFR §§300.510-300.514. See Question E-7 of the *Questions and Answers on IDEA Part B Dispute Resolution Procedures (Q&A)*.¹ I have enclosed a copy of Letter to Snyder for your convenience. A copy of this letter is also posted on the Department’s web site: <http://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/15-012744-ca-snyder-exdueprocess-clearance.pdf>. Finally, there is no provision in the IDEA Part B regulations that permits the parties to a due process complaint that involves the disciplinary issues in 34 CFR §300.532(c) to waive the timelines in 34 CFR §300.532(c)(4).

¹ *Questions and Answers on IDEA Part B Dispute Resolution Procedures* can be found at: <http://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/acccombinedosersdisputeresolutionqafinalmemo-7-23-13.pdf>.

We note that your correspondence also included a question concerning Illinois' State regulation pertaining to expedited due process hearing requests. Without further information, OSEP is unable to determine whether the regulation is consistent with the IDEA. As a result of the concern you raised, OSEP will follow-up with the Illinois State Board of Education to address this matter.

Question: Based on the growing body of research and experience related to Response to Intervention (RTI), does OSEP extend legal recognition to fidelity (sometimes alternatively referred to as integrity), as an additional distinguishing and necessary core characteristic that a few States have expressly included in their RTI laws?

Answer: The regulations implementing the 2004 Amendments to the IDEA include a provision mandating that States allow, as part of their criteria for determining whether a child has a specific learning disability (SLD), the use of a process based on the child's response to scientific, research-based intervention. See 34 CFR §300.307(a)(2). In its January 21, 2011 Memo 11-07, *A Response to Intervention (RTI) Process Cannot Be Used to Delay-Deny an Evaluation for Eligibility under the Individuals with Disabilities Education Act (IDEA)*, OSEP stated that a multi-tiered instructional framework, often referred to as RTI, is a schoolwide approach that addresses the needs of all students, including struggling learners and students with disabilities, and integrates assessment and intervention within a multi-level instructional and behavioral system to maximize student achievement and reduce problem behaviors. With a multi-tiered instructional framework, schools identify students at-risk for poor learning outcomes, monitor student progress, provide evidence-based interventions, and adjust the intensity and nature of those interventions depending on a student's responsiveness. OSEP noted that while the Department does not subscribe to a particular RTI framework, there are core characteristics that underpin all RTI models: (1) students receive high quality research-based instruction in their general education setting; (2) continuous monitoring of student performance is performed; (3) all students are screened for academic and behavioral problems; and (4) multiple levels (tiers) of instruction that are progressively more intense, based on the student's response to intervention are provided. A copy of OSEP Memo 11-07 may be viewed at: <http://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/osep11-07rtimemo.pdf>.

To assist State educational agencies (SEAs) and local school districts with planning and implementing RTI, OSEP provided funding to establish the National Center on Response to Intervention (Center). The Center has completed its funding cycle but continues to make its resources available to the public.² The Center's technical assistance documents address four essential components (i.e., core characteristics) of RTI. The Center notes that fidelity of implementation plays an integral role within the entire RTI framework at the school and classroom levels. The Center also provides a full description of the role monitoring fidelity plays in RTI in a recorded webinar.³

Neither the IDEA nor its implementing regulations identify "core characteristics" of an RTI process or address fidelity of implementation. While OSEP has provided guidance and the

² These resources are available at: <http://www.rti4success.org/resources>.

³ The webinar may be viewed at: <http://www.rti4success.org/video/monitoring>.

Center provides technical assistance that is designed to support SEAs and school districts in their implementation efforts, these actions should not be viewed as requiring the use of a particular RTI approach with specific core components or characteristics, to meet the requirement in 34 CFR §300.307(a)(2).

Question: Does the IDEA regulation in 34 CFR §300.600(e), which requires SEAs to assure correction of noncompliance with free appropriate public education requirements and other specified IDEA obligations within one year, apply to corrective action orders of the complaint resolution process and to the remedies in due process hearing decisions?

Answer: As part of its general supervisory responsibilities, the State must ensure that when it identifies noncompliance with the IDEA requirements by LEAs, the noncompliance is corrected as soon as possible, and in no case later than one year after the State's identification of the noncompliance. See 34 CFR §300.600(e). With respect to implementation of State complaint decisions, OSEP has advised that the SEA must inform the public agency that is involved in the complaint of any findings of noncompliance and the required corrective action, and ensure that the corrective action is completed as soon as possible, and within the timeframe specified in the SEA's written decision, and in no case later than one year of the State's identification of the noncompliance. See Q&A, Question B-31.

The one-year timeline for the correction of noncompliance in 34 CFR §300.600(e) is not intended to limit an SEA's authority or flexibility to determine the appropriate remedy or corrective action necessary to resolve a complaint in which the SEA has found that the public agency has failed to provide appropriate services to a child or group of children with disabilities. We recognize that in some circumstances providing the remedy ordered in the SEA's complaint decision could take more than one year to complete (e.g., the SEA orders an action, such as compensatory services, the provision of which, will extend beyond one year; the corrective action timeline is extended because the parent or adult student fails to take action that is essential to implementation of the SEA's decision; the parties mutually agree to extend the timeline for implementation).

Likewise, with due process hearing decisions, OSEP has advised that hearing decisions must be implemented within the timeframe prescribed by the hearing officer, or if there is no timeframe prescribed by the hearing officer, within a reasonable timeframe set by the State as required by 34 CFR §§300.511-300.514. The SEA, pursuant to its general supervisory responsibility under 34 CFR §§300.149 and 300.600, must ensure that the public agency involved in the due process hearing implements the hearing officer's decision in a timely manner, unless either party appeals the decision. See Q&A, Question C-26.

In OSEP's Letter to Voigt (June 2, 2014), we stated:

While the IDEA does not specifically address State-established timelines for implementation of final administrative decisions, we would expect that all final due process decisions are implemented within a reasonable period of time and without undue delay so that a child with a disability receives the services determined necessary to provide that child with the free appropriate public education to which he or she is entitled, but has been denied, under the IDEA.

These determinations are highly factual in nature; therefore, we believe that what constitutes a “reasonable period of time” depends in part on the circumstances surrounding the decision.

A copy of this letter is enclosed for your convenience and may be viewed at:
<http://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/acc-11-020700r-pa-voigt-dueprocesshearingdecisions.pdf>.

If circumstances surrounding implementation of the State complaint decision or hearing decision require more than one year to carry out, the SEA must, consistent with its general supervisory authority, continue to follow-up to ensure implementation of the decision, even after the one-year timeline ends.

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 Department of the IDEA in the context of the specific facts presented.

If you have any further questions, please do not hesitate to contact Lisa Pagano at 202-245-7413 or by email at Lisa.Pagano@ed.gov.

Sincerely,

/s/

Ruth E. Ryder
Acting Director
Office of Special Education Programs

Enclosures