



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

MAR 17 2008

John Worthington
Acting Director
New Jersey Department of Education
Office of the State Board of Appeals
Post Office Box 500
Trenton, NJ 08825-0500

Dear Mr. Worthington:

This letter is in response to your electronic mail correspondence dated November 30, 2007 to Susan Falkenhan, the New Jersey State contact, of my staff. This email followed a series of telephone conversations with Ms. Falkenhan and Dr. Deborah Morrow of my staff, regarding 34 CFR §300.510 and, specifically, when the due process hearing timeline would begin under various circumstances. In your email, you present the following scenario and subsequent questions:

A petition for a due process hearing is filed by a parent. Thirty days have passed from the time the petition was filed. No resolution meeting or mediation session has been scheduled or held. The parties have NOT waived the resolution meeting in writing and no attempt has been made by the LEA [local educational agency] to schedule a resolution meeting. The parent has not filed a motion pursuant to 34 CFR §300.510(b)(5), requesting the hearing officer start the due process hearing timeline and the LEA has not filed a motion pursuant to 34 CFR §300.510(b)(4) seeking to dismiss the petition based on the failure of the parent to attend the resolution meeting.

In the above factual scenario, what should happen on day 31? If all of the facts above are the same, but when the SEA (State educational agency) inquires of the LEA whether it has attempted to secure the attendance of the parent at a resolution meeting, it is informed no such attempt has been made, but that the attorney for the LEA is discussing the matter with the attorney for the parent in an attempt to resolve the matter, what should happen on day 31?

As you know, the LEA has an affirmative obligation to convene a resolution meeting within 15 days of receiving notice of the parent's due process complaint (and prior to the initiation of the due process hearing). 34 CFR §300.510(a)(1). If the LEA is not meeting this obligation, the SEA, consistent with its general supervisory responsibilities under 34 CFR §300.600(a), must enforce this requirement. The SEA may use a variety of methods to do so, including those provided for in 34 CFR §§300.600(a) and 300.608. However, the SEA may not extend the resolution process period beyond 30 days and it may not grant to a hearing officer the specific

authority to dismiss a due process complaint if the parent is not proceeding and the LEA has not convened the resolution hearing.

Under 34 CFR §300.510(b)(4), the LEA may request that the hearing officer dismiss the complaint if the LEA is unable to secure the participation of the parent in the resolution meeting after reasonable efforts have been made and documented. Similarly, the parent has the option of seeking the intervention of the hearing officer to begin the due process hearing timeline if the LEA fails to hold the resolution meeting as specified in 34 CFR §300.510(a). 34 CFR §300.510(b)(5).


If both the LEA and the parent fail to exercise their rights as described above, regardless of the reasons for the parties' inaction, the timelines regarding due process complaints remain in effect. Unless one of the circumstances in 34 CFR §300.510(c) applies and there is an adjustment to the 30-day resolution period, the timeline for issuing a final decision begins at the expiration of the 30-day resolution period. 34 CFR §300.510(b)(2). Accordingly, even when both the parents and the LEA have permitted the due process complaint to linger, the SEA must ensure that a final decision is reached and mailed to the parties in compliance with the 45-day timeline provided for in 34 CFR §300.510(b)(2). 34 CFR §300.515(a).

At any time after the receipt of a due process complaint, the SEA may, under 34 CFR §300.515(a), assign a complaint to a hearing officer for tracking or other administrative purposes. If the parties have failed to take any action on the complaint, on the 31st day after receipt of the due process complaint, the SEA may refer the complaint to the hearing officer (if it has not already done so) and ask the hearing officer to contact the parties for a status report and/or convene a hearing. While the SEA is not required to refer the dormant due process complaint to a hearing officer immediately after the expiration of the 30 day resolution period, as stated above, the SEA is responsible for ensuring that the 45-day timeline provided for in 34 CFR §300.510(b)(2) is met.

Based on section 607(c) 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.

We hope this information is helpful to you. If you have further questions, please do not hesitate to contact Susan Falkenhan at 202-245-7242.

Sincerely,


William W. Knudsen
Acting Director
Office of Special Education
Programs

cc: Roberta Wohle