

112 LRP 35009

Letter to Cox
Office of Special Education Programs

N/A

June 22, 2012

Related Index Numbers

160.055 Timeliness

390.013 Due Process Hearings

Judge / Administrative Officer

Melody Musgrove, Director

Case Summary

Summertime doesn't necessarily mean a break from expedited due process hearings when a disciplinary removal is at issue, OSEP explained to a state education official. Educational agencies must count summer school days when complying with the 20-day deadline for arranging an expedited hearing under 34 CFR 300.532(a) if the district's summer program is open to all students. OSEP noted that a parent may request an expedited hearing if he or she disagrees with a disciplinary change of placement or a manifestation determination. An LEA may also request an expedited hearing if it believes that keeping the child in his or her current placement is substantially likely to result in injury. 34 CFR 300.532(a). Moreover, a district or SEA must arrange the expedited hearing within 20 school days of the date the complaint is filed. 34 CFR 300.532(c)(2). A "school day," OSEP observed, is any day that children attend school for instructional purposes. 34 CFR 300.11(c)(1). However, instructional days occurring over the summer should be counted as "school days" for purposes of the regulation only if the summer program is open to the student population at large. If the program is only for students with disabilities, then the instructional days occurring during the program need not be counted for purposes of timing an expedited hearing.

Full Text

Appearances:

Mr. H. Douglas Cox

Assistant Superintendent

Commonwealth of Virginia, Department of Education P.O. Box 2120

Richmond, Virginia 23218

Dear Mr. Cox:

Received

JUN 29 2012

Dispute Resolution & Administrative Services

This is in response to your February 27, 2012 letter regarding the application of the expedited due process hearing requirements in 34 CFR §300.532(c)(2) of the regulations implementing Part B of the Individuals with Disabilities Education Act (IDEA). Under this regulatory provision, which implements section 615(k)(4)(B) of IDEA, an expedited due process hearing must occur within 20 school days of the date the complaint is filed and the hearing officer must make a determination within 10 school days after the hearing. 20 U.S.C. 1415(k)(4)(B). Specifically you asked how State educational agencies (SEAs) are expected to apply this provision when school is not in session during summer months and an expedited due process hearing is requested. Further, you stated that some of Virginia's school divisions operate summer school programs for both students with, and students without, disabilities, while other Virginia school divisions do not operate such summer school programs.

Under 34 CFR §300.532(a), a parent of a child with a disability who disagrees with any decision regarding placement under 34 CFR §§300.530 and 300.531, or the manifestation determination under 34 CFR §300.530(e), or a local educational agency (LEA) that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, may appeal the decision by requesting a due process hearing. Whenever a hearing is requested under 34 CFR §300.532(a), the SEA or LEA is responsible for

arranging the expedited due process hearing, which must occur within 20 school days of the date the complaint is filed. 34 CFR §300.532(c)(2). The hearing officer must make a determination within 10 school days after the hearing. Id.

Accordingly, section 615(k)(4)(B) of IDEA and 34 CFR §300.532(c) are clear that the timeline for an expedited due process hearing is determined by school days. A school day is defined under 34 CFR §300.11(c)(1) as any day, including a partial day, that children are in attendance at school for instructional purposes. School day has the same meaning for all children in school, including children with and without disabilities. 34 CFR §300.11(c)(2). Therefore, when an expedited due process hearing is requested under 34 CFR §300.532(a), the State or LEA responsible for arranging the expedited due process hearing must count any day that children are in attendance at summer school for instructional purposes as a "school day" under 34 CFR §300.11(c). This requirement applies to your Virginia school divisions that operate summer school programs for both students with, and students without, disabilities.

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Further, the Area 1 is of Comments' and Changes section of the August 14, 2006 final IDEA, Part

readations states. under 34 CFR §300.11(c), "consistent with this requirement, days on which [extended school n services are provided cannot be counted as a school day because

SY services are provided only to children with disabilities." When an expedited

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hearing is requested under 34 CFR §300.532(a), the State or LEA responsible for arranging the expedited due process hearing would not be required to count any day that children are receiving ESY services as a "school day" under 34 CFR §300.11(c). Thus, a day on which Virginia school divisions only provide ESY services to children with disabilities and

do not operate summer school programs for all children cannot be counted as a "school day." As noted above, a school day has the same meaning for all children in school, including children with and without disabilities. 34 CFR §300.11(c)(2).

However, if a due process hearing is requested under 34 CFR §§300.507-300.516, when school is not in session, the SEA is required to meet the timelines in 34 CFR §300.515(a). Under this provision, "the public agency must ensure that not later than 45 days after the expiration of the 30 day period under 34 CFR §300.510(b), or the adjusted time periods described in 34 CFR §300.510(c) (1) A final decision is reached in the hearing; and (2) A copy of the decision is

mailed to each of the parties." Under 34 CFR §300.11(a), a day means calendar day unless otherwise indicated as a business day or school day. Therefore, when a due process hearing is requested under 34 CFR §§300.507 through 300.516, the SEA is required to meet applicable timelines, whether or not the school division operates a summer school program.

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 any further questions, please do not hesitate to contact Jennifer Wolfsheimer at 202245-6090 or by email at Jennifer.Wolfsheimer@ed.gov.

Statutes Cited

20 USE 1415(k)(4)(B)

Regulations Cited

- 34 CFR 300.532(a)
- 34 CFR 300.532(c)(2)
- 34 CFR 300.11(c)(1)
- 34 CFR 300.530(e)
- 34 CFR 300.11(c)(2)
- 34 CFR 300.507
- 34 CFR 300.510(c)(1)

34 CFR 300.515(a)

34 CFR 300.510(b)